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100TH CONGRESS
1st Session

SENATE

S. Doc
100-7

CREATION OF THE SENATE

FROM THE PROCEEDINGS OF
THE FEDERAL CONVENTION
PHILADELPHIA
MAY–SEPTEMBER, 1787

PREPARED BY
GEORGE J. SCHULZ, *Director*
Legislative Reference Service
Library of Congress
1937

REPRINTED WITH A NEW INTRODUCTION BY
ROBERT C. BYRD, *Senate Majority Leader*
ROBERT DOLE, *Senate Republican Leader*

1987

U.S. SENATE BICENTENNIAL PUBLICATION NO. 3

U.S. GOVERNMENT PRINTING OFFICE
74-310 WASHINGTON : 1987

100TH CONGRESS
1ST SESSION

S. RES. 214

To authorize the reprinting of the manuscript entitled "Creation of the Senate", prepared by Dr. George J. Schulz in 1937.

IN THE SENATE OF THE UNITED STATES

MAY 12 (legislative day, MAY 8), 1987

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to

RESOLUTION

To authorize the reprinting of the manuscript entitled "Creation of the Senate", prepared by Dr. George J. Schulz in 1937.

Resolved, That the manuscript entitled "Creation of the Senate", prepared by Dr. George J. Schulz, Director of the Legislative Reference Service, Library of Congress, and originally ordered printed as a Senate document in the 75th Congress in 1937, shall be reprinted as a Senate document.

SEC. 2. Such document shall include a suitable cover commemorating the Bicentennial of the Senate and a new preface to be prepared by the Majority Leader and the Minority Leader.

INTRODUCTION

In 1937, on the eve of the Constitutional Convention's 150th anniversary, Dr. George J. Schulz, Director of the Library of Congress' Legislative Reference Service, prepared this document for publication. The volume consists of a chronological account, drawn from James Madison's *Notes of Debates in the Federal Convention*, of that portion of the convention's secret deliberations that relate to establishment of the Senate.

Among the several delegates who kept notes during the course of the convention, between May and September 1787, James Madison was the most diligent and accurate. He deliberately selected a seat in front of the presiding officer. As he wrote later, "In this favorable position for hearing all that passed, I noted . . . what was read from the chair or spoken by the members; and losing not a moment unnecessarily between the adjournment and reassembling of the Convention I was enabled to write out my daily notes during the session or within a few finishing days after its close . . ."

Catherine Drinker Bowen, in her magnificent account of the convention, *Miracle at Philadelphia*, paints this picture of Madison as reporter: "In the front row near the desk, James Madison sat bowed over his tablet, writing steadily. His eyes were blue, his face ruddy. He did not have the scholar's pallor. His figure was well-knit and muscular, and he carried his clothes with style. Though he usually wore black, he had also been described as handsomely dressed in blue and buff, with ruffles at breast and wrist. Already / at age 36/ he was growing bald and brushed his hair down to hide it. He wore a queue /pigtail/ and powder. He walked with the quick, bouncing step that sometimes characterized men of remarkable energy."

As we know, Madison was more than a passive reporter of convention proceedings. He was no less than the Constitution's principal architect. Consequently, his *Notes* are of particular value as a source of his own influential views. Without his record, we would have today a sparse and fragmented knowledge of what went on behind the convention's closed doors. This is particularly true with regard to the framers' deliberations as to the Senate's structure and role.

As Chairman and Vice Chairman of the Senate Bicentennial Commission, we are pleased to sponsor the re-issue of this useful volume, which has been out of print for many years. It offers Senators and all Americans a first-hand account of how the convention proceeded to form the Senate, from a hopeful springtime beginning, through the difficult and momentous deliberations of a hot Philadelphia summer, to the final provisions of the September 1787 Constitution.

ROBERT C. BYRD, *Majority Leader.*
ROBERT DOLE, *Minority Leader.*

75TH CONGRESS
1st Session

SENATE

DOCUMENT
No. 45

CREATION OF THE SENATE

MONOGRAPH

RELATING TO THE

CREATION OF THE SENATE

OF THE

UNITED STATES

PREPARED BY

GEORGE J. SCHULZ, *Director*

LEGISLATIVE REFERENCE SERVICE

LIBRARY OF CONGRESS

MARCH 17, 1937.—Referred to the Committee on Printing

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1937

SENATE RESOLUTION NO. 105

Reported by Mr. HAYDEN

IN THE SENATE OF THE UNITED STATES,

March 29, 1937.

Resolved, That the manuscript entitled "Creation of the Senate", prepared by Doctor George J. Schulz, Director of the Legislative Reference Service, Library of Congress, be printed as a Senate Document.

Attest:

EDWIN A. HALSEY,
Secretary.

CREATION OF THE SENATE

PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF 1787

The first intimation in the Constitutional Convention of 1787 of a bicameral legislature for the Government to be created is to be found in the series of resolutions introduced on Tuesday, May 29, by Edmund Randolph. Of these resolutions, those with which we are here concerned follow:

3. *Resolved*, that the National Legislature ought to consist of two branches.

5. *Resolved*, that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of ——— years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of ——— after the expiration thereof.

6. *Resolved*, that each branch ought to possess the right of originating acts; * * *.[1]

On the same day Mr. Charles Pinckney, of South Carolina, laid before the Confederation his draft of a Federal Government. Of this plan, article II was as follows:

The legislative power shall be vested in a Congress, to consist of two separate Houses; one to be called the House of Delegates; and the other the Senate, who shall meet on the ——— day of ——— in every year.[2]

In article III of Pinckney's draft, which provided for the House of Representatives, it was provided that

All money bills of every kind shall originate in the House of Delegates, and shall not be altered by the Senate.[3]

Article IV of Pinckney's draft provided for the Senate, as follows:

The Senate shall be elected and chosen by the House of Delegates; which House, immediately after their meeting, shall choose by ballot ——— Senators from among the citizens and residents of New Hampshire; ——— from among those of Massachusetts; ——— from among those of Rhode Island; ——— from among those of Connecticut; ——— from among those of New York; ——— from among those of New Jersey; ——— from among those of Pennsylvania; ——— from among those of Delaware; ——— from among those of Maryland; ——— from among those of Virginia; ——— from among those of North Carolina; ——— from among those of South Carolina; and ——— from among those of Georgia. The Senators chosen from New Hampshire, Massachusetts, Rhode Island, and Connecticut, shall form one class; those from New York, New Jersey, Pennsylvania, and Delaware, one class; and those from Maryland, Virginia, North Carolina, South Carolina, and Georgia, one class. The House of Delegates shall number these classes one, two, and three; and fix the times of their

[1] Madison Papers, Gilpin edition, vol. II, Washington, 1840, pp. 731–732.
[2] Madison Papers, op. cit., p. 732.
[3] Ibid., p. 735.
[4] Ibid., p. 736.
[5] Ibid., p. 737.

service by lot. The first class shall serve for ——— years; the second for ——— years; and the third for ——— years. As their times of service expire, the House of Delegates shall fill them up by election for ——— years; and they shall fill all vacancies that arise from death or resignation, for the time of service remaining of the members so dying or resigning. Each Senator shall be ——— years of age at least; and shall have been a citizen of the United States for four years before his election; and shall be a resident of the State he is chosen from. The Senate shall choose its own officers.[6]

Article VII of Pinckney's plan provided:

The Senate shall have the sole and exclusive power to declare war; and to make treaties; and to appoint ambassadors and other ministers to foreign nations, and judges of the Supreme Court.

They shall have the exclusive power to regulate the manner of deciding all disputes and controversies now existing, or which may arise, between the States, respecting jurisdiction or territory.[7]

In article VIII, the article of Pinckey's draft providing for the Presidency, there is found this provision:

* * * In case of his [the President of the United States] removal, death, resignation, or disability, the President of the Senate shall exercise the duties of his office until another President be chosen.[8]

Article X provides:

Immediately after the first census of the people of the United States, the House of Delegates shall apportion the Senate by electing for each State, out of the citizens resident therein, one Senator for every ——— members each State shall have in the House of Delegates. Each State shall be entitled to have at least one member in the Senate.[9]

On May 30, the Convention, pursuant to its resolution of the day previous, resolved itself into a Committee of the Whole on the State of the Union for the purpose of considering the propositions which Mr. Randolph had laid before it. On May 31, the Committee reached the third of Randolph's resolutions, namely: "that the National Legislature ought to consist of two branches." This "was agreed to without debate, or dissent, except that of Pennsylvania— given probably from complaisance to Dr. Franklin, who was understood to be partial to a single house of legislation."[10]

In the debate upon the fourth of Randolph's resolutions, which provided for the proposed "first branch of the National Legislature", the second branch proposed was either directly or indirectly referred to. Mr. Madison observed "that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors."[11]

Mr. Madison further observed that—

he was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the legislature, and in the executive and judiciary branches of the government.[12]

On the same day the Committee proceeded to the consideration of the fifth resolution of the Randolph draft, namely, "that the second [or senatorial][13] branch of the National Legislature ought to be chosen

[6] Madison Papers, op. cit., pp. 737-738.
[7] Ibid., p. 742.
[8] Ibid., p. 743.
[9] Ibid., p. 744.
[10] Ibid., p. 760.
[11] Ibid., p. 775.
[12] Ibid., p. 776.
[13] Note the use of the term here.

by the first branch out of persons nominated by the State legislatures."[14]

Mr. Spaight "contended that the second branch ought to be chosen by the State legislatures, and moved an amendment to that effect."

Mr. Butler apprehended that taking so many powers out of the hands of the States as was proposed tended to destroy all the balance and security of interests among the States which it was necessary to preserve; and called on Mr. Randolph to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.[14]

Mr. Randolph observed that he had at the time of offering his propositions stated his ideas as far as the nature of the general propositions required. If he was to give an opinion as to the number of the second branch he thought it ought to be much smaller than that of the first; so small, indeed, as to be exempt from the passionate proceedings to which numerous assemblies are liable.[14] He held that the general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for against this tendency, and that a good Senate seemed most likely to answer the purpose.[15]

Mr. King thought the choice of the second branch by the State legislatures would be impracticable unless it was to be very numerous, or the idea of proportion among the States was to be disregarded. According to this idea, he thought there must be eighty or a hundred members to entitle Delaware to the choice of one of them.[16] At this point Mr. Spaight withdrew his motion.[16]

Mr. Wilson opposed both a nomination by the State legislatures, and an election by the first branch of the National Legislature, because the second branch of the latter ought to be independent of both. He thought both branches of the National Legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of choosing the Senate of New York, namely, that of uniting several election districts for one branch, in choosing members for the other branch, as a good model.[16]

Mr. Madison observed that such a mode would destroy the influence of the smaller States associated with larger ones in the same district; as the latter would choose from within themselves, although better men might be found in the former. The election of Senators in Virginia, where large and small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality would often prefer a resident within the county or State to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own State.[17]

Mr. Sherman favored an election of one member by each of the State legislatures.[18]

Mr. Pinckney moved to strike out the "nomination by the State legislatures." On the motion, nine States—Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia—voted "No." The Delaware delega-

[14] Madison Papers, op. cit., p. 757.
[14] Ibid., p. 758.
[15] Ibid., p. 758.
[16] Ibid., pp. 758-759.
[16] Ibid., p. 759.

tion was divided.[16] When the vote on the whole question was taken—namely, election by the first branch out of nominations by the State legislatures—the vote stood: Ayes 3—Massachusetts, Virginia, South Carolina; and Noes 7—Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia.[17]

Thus the clause was disagreed to at that time.

On the sixth resolution, which related to the subject matter of legislation to be considered by the proposed Congress it was unanimously agreed without debate that each branch should have the authority to originate laws.[18]

In the debate on June 1 on the Executive, Mr. Wilson renewed his declarations in favor of selection by the people. He wished to have not only both branches of the Legislature elected by the people without the intervention of the State legislatures, but the Executive also, in order to make them independent not only of each other but of the States as well.[19]

Mr. Rutledge suggested that the Executive be chosen by the second branch of the National Legislature alone.[20]

On the occasion of debating the appointment of the Executive, on June 2, the issue of his removal was raised, and in a general discussion involving these and other issues Mr. Dickinson said he hoped that each State would retain an equal voice in at least one branch of the National Legislature.[21]

On June 5 when the appointment of judges by the National Legislature was under consideration Mr. Madison stated that he disliked the election of the judges by the Legislature, or any numerous body. He was, likewise, not satisfied with referring the appointment of the judges to the Executive. He rather inclined to give it to the senatorial branch, as numerous enough to be confided in, as not so numerous as to be governed by the motives of the other branch, and as being sufficiently stable and independent to follow their deliberate judgments. He moved, however, that "appointment by the Legislature," be struck out. On the question the vote was 9 to 2.[22]

In the debate on June 6 on Mr. Pinckney's motion "that the first branch of the National Legislature be elected by the State legislatures, and not by the people",[23] the election of the second branch was generally referred to.

Mr. Dickinson thought that in the formation of the Senate it should be carried through such a refining process as would assimilate it, as nearly as might be, to the House of Lords. The objection against making the National Government dependent upon the States might, he thought, be obviated by giving to the Senate an authority permanent and irrevocable for three, five, or seven years. Being thus independent they would check and decide with uncommon freedom.[24]

Mr. Pierce preferred that the second branch of the National Legislature be elected by the States, by which means, if the first branch were elected by the people, the citizens of the States would be represented both individually and collectively.[25]

General Pinckney regarded an election of either branch by the people as totally impracticable. He differed from gentlemen who

16 Madison Papers, op. cit., p. 779.
17 Ibid., p. 767.
18 Ibid., p. 768.
19 Ibid., pp. 778-779.
20 Ibid., p. 793.
21 Ibid., p. 800.
22 Ibid., p. 807.

thought that a choice by the people would be a better guard against bad measures, than a choice by the legislatures. The State legislatures, he thought, would be more jealous and more ready to thwart the National Government if excluded from a participation in it.[26]

On June 7 Mr. Dickinson moved "that the members of the second branch (of the legislature) ought to be chosen by the individual legislatures." [27]

Mr. Sherman seconded the motion, observing that the particular States would thus become interested in supporting the National Government, and that a due harmony between the two governments would be mentioned.

Mr. Pinckney held that if the small States should be allowed one Senator only, the number would be too great; there would be eighty at least.[28]

Mr. Dickinson had two reasons for his motion: (1) Because the sense of the States would be better collected through their governments than immediately from the people at large; (2) because he wished the Senate to consist of the most distinguished characters, distinguished for their ranks in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the State legislatures than in any other mode. The greatness of the number was no objection to him. He hoped there would be eighty, and twice eighty of them. If their number should be small, the popular branch could not be balanced by them.[29]

Mr. Williamson preferred a small number of Senators, but wished that each State should have at least one. He suggested twenty-five as a convenient number. The different modes of representation in the different branches would serve as a mutual check.[30]

Mr. Butler was anxious to know the ratio of representation before he gave an opinion.[31]

Mr. Wilson said that a national government should flow from the people at large. If one branch of the legislature were chosen by the legislatures, and the other by the people, the two branches would rest on different foundations, and dissensions would naturally arise between them. He wished the Senate to be elected by the people, as well as the other branch; the people might be divided into proper districts for the purpose. He moved to postpone the motion of Mr. Dickinson in order to take up one of that import.[32]

Mr. Read proposed that the Senate be appointed by the Executive Magistrate, out of a proper number of persons to be nominated by the individual legislatures. His proposal was neither seconded nor supported.

Mr. Madison held that if Mr. Dickinson's motion were agreed to it would be necessary to depart from the doctrine of proportional representation or to admit into the Senate a very large number of members. The first he held to be inadmissable, being evidently unjust; the second, he held to be inexpedient. The use of the Senate he said was to consist in its proceeding with more coolness, with more system, and with more wisdom than the popular branch. En-

[26] Madison Papers, op. cit., p. 808.
[27] Ibid., p. 812.
[28] Ibid., p. 813.
[29] Ibid., p. 813.
[30] Ibid., p. 814.

larged in number there would be communicated to it the vices which it was meant to correct. He differed with Mr. Dickinson who thought that the additional number would give additional weight to the body. It appeared to him on the contrary that their weight would be in inverse ratio to their numbers. The example of the Roman tribunes was applicable. They lost their influence and power in proportion as their number was augmented. The more the representatives of the people were multiplied the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves, either from their own indiscretions or the artifices of the opposite faction, and less capable therefore of fulfilling their trust. When the weight of a set of men depends merely upon their personal characters, the greater the number, the greater the weight. When it depends on the degree of political authority lodged in them, the smaller the number the greater the weight.[31]

Mr. Gerry said that four methods of appointing the Senate had been mentioned, as follows:

(1) By the first branch of the National Legislature, a method which would create a dependence contrary to the end proposed.

(2) By the National Executive, a stride towards monarchy that few would think of.

(3) By the people. The people had two great interests, the landed interest and the commercial, including the stockholders. To draw both branches from the people would leave no security to the latter interest, the people being chiefly composed of the landed interest and erroneously supposing that the other interests are adverse to it.

(4) By the individual legislatures. Elections carried through this refinement would be most likely to provide some check in favor of the commercial interest against the landed, without which oppression would take place. As no free government could last long where that is the case, he was in favor of the last method.[32]

Mr. Dickinson regarded the preservation of the States in a certain degree of agency as indispensable. It would produce that collision between the different authorities which should be wished for in order to check each other. He adhered to the opinion that the Senate ought to be composed of a large number, and that their influence, from family weight and other causes, would be increased thereby. He did not admit that the tribunes lost their weight in proportion as their number was augmented. If the reasoning of Mr. Madison was good it would prove that the number of the Senate ought to be reduced below ten, the highest number of the tribunitial corps.[33]

Mr. Wilson said that the British Government could not serve as a model. Our manners, our laws, the abolition of entails and primogeniture, the whole genius of our people was opposed to it. He could not comprehend in what manner the landed interest would be rendered less predominant in the Senate by election through the State legislatures than by the people themselves. He was for an election by the people in large districts, a process most likely to obtain men of intelligence and uprightness, subdividing the districts only for the accommodation of voters.[34]

Mr. Madison could as little comprehend in what manner family weight would be more certainly conveyed into the Senate through

[31] Madison Papers, op. cit., p. 815.
[32] Ibid., p. 816.
[33] Ibid., p. 817.
[34] Ibid., pp. 817-818.

elections by the State legislatures than in some other modes. The true question was in what mode the best choice could be made. If an election by the people or through any other channel than the State legislatures promised as uncorrupt and impartial a preference of merit there could be no necessity for an appointment by those legislatures. Nor was it apparent that a more useful check would be derived through that channel than from the people through some other.[35]

Mr. Sherman opposed elections by the people in districts as not likely to produce such fit men as elections by the State legislatures.

Mr. Gerry insisted that the commercial and monied interests would be more secure in the hands of the State legislatures than of the people at large. The former had more sense of character and would be restrained by that from injustice. Besides, in some States there were two branches in the legislature, one of which was somewhat aristocratic. There would therefore be so far a better chance of refinement in the choice. There seemed to be three powerful objections against elections by districts: (1) It was impracticable; the people could not be brought to one place for the purpose, and whether brought to the same place or not, numberless frauds would be unavoidable; (2) small States forming part of the same district with a large one, or a large part of a large one, would have no chance of gaining an appointment for its citizens of merit; (3) a new source of discord would be opened between different parts of the same district.

Mr. Pinckney thought the second branch ought to be permanent and independent, and that the members of it would be rendered more so by receiving their appointments from the State legislatures.[36] This mode would avoid the rivalships and discontents incident to the election by districts. He was for dividing the States into three classes according to their respective sizes, and for allowing to the first class three members; to the second, two; and to the third, one.

On the question for postponing Mr. Dickinson's motion referring the appointment of the Senate to the State legislatures in order to consider Mr. Wilson's for referring it to the people, the vote stood:

Ayes: Pennsylvania.

Noes: Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia.[37]

On Mr. Dickinson's motion to appoint the Senate by the State legislatures the vote stood:

Ayes: Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia.[38]

On June 9 Mr. Patterson moved to resume consideration of the clause relating to the rule of suffrage in the National Legislature, Messrs. Pinckney and Rutledge having moved on June 8 to add to the fourth resolution agreed to by the committee, the following:

> that the States be divided into three classes, the first class to have three members, the second two, and the third one member, each; that an estimate be taken of the comparative importance of each State at fixed periods, so as to ascertain the number of members they may from time to time be entitled to.[39]

Mr. Brearly seconded Mr. Patterson's motion.

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[35] Madison Papers, op. cit., p. 818.
[36] Ibid., p. 819.
[37] Ibid., p. 820.
[38] Ibid., p. 821.
[39] Ibid., p. 828.

The matter, much agitated in Congress at the time of forming the Confederation was then rightly settled by allowing to each sovereign State an equal vote. Otherwise the small States must have been destroyed instead of being saved. Mr. Brearly's discussion at this point centered upon the principle of proportional representation. He was followed by Mr. Patterson. Since the principle of proportional representation in general is not pertinent the discussion is here omitted.[39] On June 11, however, Mr. Sherman proposed that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants; and that in the second branch, or Senate, each State should have one vote and no more. He said that as the States would remain possessed of certain individual rights, each State ought to be able to protect itself; otherwise a few large States would rule the rest.[40]

On the same day Mr. Sherman moved that a question be taken whether each State should have one vote in the second branch of the National Legislature, the question on representation in the first branch having been taken. Everything, said Mr. Sherman, depended upon the question of an equality of representation in the second branch. He held that the smaller States would never agree to the plan on any principle other than an equality of suffrage in that branch. Mr. Ellsworth seconded the motion. On the question the States divided as follows:[42]

Ayes: Connecticut, New York, New Jersey, Delaware, Maryland, 5.

Noes: Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6.

Mr. Wilson and Mr. Hamilton moved that the right of suffrage in the second branch ought to be according to the same rule as in the first branch; and on this question of making the ratio of representation the same in the second as in the first branch it passed, the vote being as follows:[42]

Ayes: Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6.

Noes: Connecticut, New York, New Jersey, Delaware, Maryland, 5.

On June 12 the Committee considered among other resolutions that relating to the age of members of the Senate, and upon motion it was decided to make the age qualification thirty years. The vote on this motion was as follows: [43]

Ayes: Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 7.

Noes: Connecticut, New Jersey, Delaware, Georgia, 4.

With respect to the tenure of Senators, Mr. Spaight moved for a period of seven years. Mr. Sherman thought that too long, on the ground that if Senators performed their duty well they would be reelected; while if they acted amiss there should be an earlier opportunity to get rid of them. He preferred five years, a term between that of the first branch and the Executive. Mr. Pierce proposed three years. Seven years would raise an alarm. Great mischiefs had arisen in England from the Septennial Act, reprobated by most of their patriotic statesmen.[43] Mr. Randolph preferred seven years. The

[39] Madison Papers, op. cit., pp. 830-834.
[40] Ibid., p. 836.
[42] Ibid., p. 843.
[43] Ibid., p. 851.

democratic licentiousness of the State legislatures proved the necessity for a firm Senate; the object of the second branch of the National Legislature being to control the democratic branch. If the Senate were not a firm body, the other branch, being more numerous and coming from the people, would overwhelm it. The Senate of Maryland, constituted on like principles, had been scarcely able to stem the popular torrent. No mischief could be apprehended, since the concurrence of the other branch and in some measure of the Executive, would in all cases be necessary. Firmness and independence in the second branch would be the more necessary since this branch should guard the Constitution against the encroachment of the Executive, who would be apt to form combinations with the demagogues of the popular branch.[43] Mr. Madison considered seven years by no means too long. He wished to give the Government the stability everywhere called for, which the enemies of the republican form alleged to be inconsistent with it nature. He was not afraid of giving too much stability by the term of seven years. His fear was that the popular branch would still be too great an overmatch for it. He lamented that there was so little experience by which to be guided, the constitution of Maryland being the only one that bore any analogy to this part of the plan. In no instance had the Senate of Maryland created just suspicions of danger from it. In some instances it might have erred by yielding to the House of Delegates.[44] In every instance of their opposition to the measures of the House of Delegates they had had with them the suffrages of the most enlightened and impartial people of the other States, as well as of their own. In those States where the Senates were chosen in the same manner as the other branches of the legislatures and held their seats for four years, the institution was found to be no check whatever against the instabilities of the other branches. On the question for seven years as the term of the second branch the vote stood.[45]

Yeas: New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8.

Noes: Connecticut.

Massachusetts and New York divided.

Following the vote on tenure Mr. Butler and Mr. Rutledge proposed that members of the second branch should be entitled to no salary or compensation for their services. On the question the vote stood: [46]

Yeas: Connecticut, Delaware, South Carolina, 3.

Noes: New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, 7.

Divided: Massachusetts.

It was then moved and agreed that the clauses respecting the stipends and ineligibility of the second branch be the same as of the first branch, Connecticut disagreeing to the ineligibility.[48]

On June 13 Mr. Madison in discussing the appointment of the judges proposed that their appointment should be made by the Senate, rather than by the entire National Legislature, on the ground that the Senate being less numerous and more select would be more com-

[43] Madison Papers, op. cit., p. 852.
[44] Ibid., p. 852.
[45] Ibid., p. 853.
[46] Ibid., pp. 853–854.
[48] Ibid., p. 854.

petent and yet sufficiently numerous to justify such a confidence in them. Mr. Sherman and Mr. Pinckney, who had moved to insert a provision for appointment by the National Legislature, now withdrew their motion, and appointment of the judges by the Senate was agreed to unanimously.[49]

Mr. Gerry moved to restrain the Senate from originating money bills.[50] The other branch was more immediately the representatives of the people, and it was a maxim that the people should hold the purse strings. If the Senate were allowed to originate money bills, they would repeat the experiment till chance would furnish a set of Representatives in the other branch who would fall into their snares.[50]

Mr. Butler saw no reason for such discrimination. We were always following the British Constitution, when the reason of it did not apply. There was no analogy between the House of Lords and the body which it was proposed to establish. If the Senate were to be degraded by such discriminations, the best men would be apt to decline to serve in it, in favor of the other branch. And it would lead the latter into the practice of tacking other clauses to money bills.

Mr. Madison said that commentators on the British Constitution had not then agreed on the reason for the restriction on the House of Lords in money bills. Certainly there could be no similar reason in the case before them. The Senate would be representatives of the people, as well as the first branch. As the Senate would generally be a more capable set of men it would be wrong to disable them from any preparation of the business, especially of that which was most important, and in our Republic, worse prepared than any other.[51] In pursuance of the principle the restraint should be carried to amending as well as to originating money bills; since the addition of a given sum would be equivalent to a distinct proposition of it.[52]

Mr. King differed from Mr. Gerry, and concurred in the objections to the proposition. Mr. Read favored the proposition but would not extend the restraint to the case of amendments. Mr. Pinckney thought the question premature. If the Senate was to be formed on the same proportional representation as it stood at the time, they should have equal power; otherwise, if a different principle should be introduced.

Mr. Sherman thought that since both branches were to concur there could be no danger however the Senate might be formed. Two branches were to be established in order to get more wisdom, which is particularly needed in finance. The Senate bear their share of the taxes, and are also representatives of the people. In Connecticut both branches could originate, and it had been found safe and convenient. Whatever might have been the reason as to the House of Lords it is clear that no good arose from it even there.[52]

General Pinckney said the same distinction prevailed in South Carolina and had been a source of pernicious disputes between the two branches. The Constitution was evaded by informal schedules of amendment, handed from the Senate to the other House.

Mr. Williamson[53] said the restriction would have one advantage; it would oblige some member in the lower branch to move, and people could then mark him.

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[49] Madison Papers, op. cit., p. 855.
[50] Ibid., p. 856.
[51] Ibid., p. 856.
[52] Ibid., p. 857.
[53] Ibid., p. 857.

On Mr. Gerry's motion to except money bills, the vote stood:[54]

Yeas: New York, Delaware, Virginia, 3.

Noes: Massachusetts, Connecticut, Maryland, New Jersey, North Carolina, South Carolina, Georgia, 7.

The Committee rising after the vote, Mr. Gorham made a report containing new proposals, consideration of which was postponed for a day. Among the proposals was a provision for a bicameral legislature. Resolution No. 4 provided that the members of the second branch of the National Legislature should be chosen by the legislatures of the States; must be at least 30 years of age; were to hold office for a time sufficient to ensure their independence, namely seven years; to receive fixed stipends by which they might be compensated for the devotion of their time to the public service, to be paid out of the National Treasury, to be ineligible to any office established by a particular State, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the National Government for the space of one year after the expiration. Resolution No. 5 provided that each branch should possess the right to originate acts.[55] Resolution No. 8[56] provided that the right of suffrage in the second branch of the National Legislature should be according to the rule proposed for the first, which, according to Resolution No. 7, provided that the suffrage should be according to some equitable ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes, in each State.[57] Resolution No. 11 provided that the judges of the National judiciary should be appointed by the second branch of the National Legislature.[58]

On June 15 Mr. Patterson laid before the convention the plan proposed as a substitute for the Randolph plan. Of the resolutions of Mr. Patterson's draft only those relating to the subject matter herein considered will be referred to. It was agreed to refer it to the Committee of the Whole, and in order to place the two plans in comparison, it was ordered to recommit the other.

In discussing the plans Mr. Hamilton, after proceeding at some length, came finally to this statement:[59] To the proper adjustment of the power of government between the few and the many the British owe the excellence of their Constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, because of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of Crown or of Commons. No temporary Senate would have firmness enough to answer the purpose. The Senate of Maryland so much referred to had not been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission they would have yielded to the torrent. Their acquiescing in such an appeal is proof of it. Seven years are regarded

[54] Madison Papers, op. cit., p. 858.
[55] Ibid., pp. 858-859.
[56] Ibid., p. 860.
[57] Ibid., pp. 859-860.
[58] Ibid., p. 860.
[59] Ibid., pp. 886-887.

as a sufficient period to give the Senate adequate firmness without considering the amazing violence and turbulence of the democratic spirit.[60] He urged that members of one branch of the legislature continue for life or at least during good behavior.[61] He appealed to the feeling of the members present whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require so as to ensure the services of the best citizens. On this plan there would be in the Senate a permanent will, a weighty interest, which would answer essential purposes.[62]

Mr. Hamilton submitted to the Committee his own plan, and those sections in point for the purposes of this paper are here referred to:

> Article I. The supreme legislative power of the United States of America to be vested in two different bodies, one to be called the Assembly, the other, the Senate. * * *.
>
> Article III. The Senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to do this the States were to be divided into election districts.[63] On the death, removal or resignation of any Senator his place was to be filled out of the district from which he came.

Mr. Hamilton proposed that the Executive should have power to make treaties by and with advice and approbation of the Senate,[64] and that the appointment of all officers, including ambassadors, other than the heads or chief officers of the Department of Finance, War, and Foreign Affairs, was to be subject to the approbation or rejection of the Senate. Likewise, in exercising the power of pardon, the Executive was free except in offenses of treason, for which offense the Executive could pardon only with the approbation of the Senate.[64]

> Article V provided that upon the death, resignation, or removal of the Governor (chief executive) his authorities were to be exercised by the President of the Senate until a successor was appointed.
>
> Article VI provided that the Senate was to have the sole power of declaring war; the power of approving or rejecting all appointments of officers except the heads or chiefs of the Departments of Finance, War, and Foreign Affairs.[64]
>
> Article IX provided that the Governor, Senators, and all officers of the United States were to be liable to impeachment for mal , and corrupt conduct; and upon conviction were to be removed from office and disqualified for holding any place of trust or profit. * * *.[65]

On June 19 Mr. Patterson's plan was again laid before the Committee and after an exhaustive analysis by Mr. Madison it was moved by a vote of 7 to 3 to postpone consideration of Mr. Patterson's plan and to take up Mr. Randolph's plan as reported from the Committee on June 13.[66]

On June 20 the Committee resumed consideration of Mr. Randolph's draft, and Colonel Mason took up the discussion. Much, he said, had been said of the unsettled mind of the people. He believed the mind of the people of America, as elsewhere, was unsettled as to some points,

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[60] Madison Papers, op. cit., p. 887.
[61] Ibid., p. 888.
[62] Ibid., p. 889.
[63] Ibid., p. 891.
[64] Ibid., p. 891.
[65] Ibid., p. 892.
[66] Ibid., p. 905.

but settled as to others. In two points he was sure it was settled: First, in an attachment to republican government, secondly, in an attachment to more than one branch in the legislature.[67] The only exceptions to the establishment of two branches in the legislature are the State of Pennsylvania, and Congress; and the latter the only single one not chosen by the people themselves.

Mr. Luther Martin saw no necessity for two branches; and if it existed, Congress might be organized into two.[68]

Mr. Sherman admitted two branches to be necessary in the State legislatures but saw no necessity in a confederacy of States. The examples were all of a single council. If another branch were to be added to Congress to be chosen by the people it would serve to embarrass. The people would not much interest themselves in the elections, a few designing men in the large districts would carry their points; and the people would have no more confidence in their new representatives than in Congress.[69] If the difficulty on the subject of representation could not otherwise be got over he would agree to have two branches, and a proportional representation in one of them, provided each State had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please. Each State, like each individual, had its peculiar habits, usages, and manners, which constituted its happiness. It would not give to others a power over this happiness any more than an individual would do when he could avoid it.[70]

Mr. Wilson urged the necessity of two branches, and observed that if a proper model was not to be found in other confederacies it was not to be wondered at. Their number was small, and the duration of some at least short.[70]

On the question "the legislature ought to consist of two branches" the vote stood:[71]

Yeas: Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7.

Noes: New Jersey, New York, Delaware, 3.

Divided: Maryland.

On June 25 the mode of constituting the second branch of the legislature being under consideration the word "national" was struck out, and "United States" inserted.[72]

Mr. Wilson then took up the question, shall the members of the second branch be chosen by the legislatures of the States.[73] He was opposed to election by the State legislatures. Election by the legislatures would introduce and cherish local interests and local prejudices. The General Government is not an assemblage of States, but of individuals, for certain political purposes; it is not meant for the States, but for the individuals composing them; the individuals, therefore, not the States, ought to be represented in it. A proportion in this representation could be preserved in the second, as well as in the first branch; and the election could be made by electors chosen by the people for that purpose. He moved an amendment to that effect; it was not seconded.

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[67] Madison Papers, op. cit., p. 913.
[68] Ibid., p. 905.
[69] Ibid., p. 907.
[70] Ibid., p. 908.
[71] Ibid., p. 909.
[72] Ibid., p. 955.
[73] Ibid., p. 956.

Mr. Ellsworth saw no reason for departing from the mode contained in the report. Whoever chose the member, he would be a citizen of the State he was to represent; and he would feel the same spirit and act the same part, whether he was appointed by the people or the legislature. Wisdom was one of the characteristics which it was in contemplation to give the second branch,—would not more of it issue from the legislatures than from an immediate election by the people? He urged the necessity of maintaining the existence and agency of the States. Without their cooperation it would be impossible to support a republican government over so great an extent of territory.[74]

Mr. Williamson was at a loss to give his vote as to the Senate until he knew the number of its members. In order to ascertain this he moved to insert after "second branch of the National Legislature" the words, "who shall bear such proportion to the number of the first branch as one to * * *." He was not seconded.[75]

Mr. Mason said it was agreed on all hands that an efficient government was necessary. If the State governments were to be preserved, as he conceived to be essential, they certainly ought to have the power of self-defense, and the only mode of giving it to them was by allowing them to appoint the second branch of the National Legislature.

On the question "that the members of the second branch be chosen by the individual legislatures", the vote stood:[76]

Yeas: Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 9.

Noes: Pennsylvania, Virginia, 2.

Here the commentator states that Pennsylvania and Virginia always considered the choice of the second branch by the State legislatures as opposed to a proportional representation, to which they were attached as a fundamental principle of just government. The smaller States, who had opposite views, were reinforced by the members from the large States most anxious to secure the importance of the State governments.[76]

On the question on the clause requiring the age to be 30 years at least, it was unanimously agreed to. On a question to strike out the words "sufficient to ensure their independence" after the word "term", it was agreed to.[77]

Mr. Gorham suggested that the clause providing for a term of "seven years", should be changed to "four years", one-fourth to be elected every year. Mr. Randolph supported the idea of rotation as favorable to the wisdom and stability of the corps, which might possibly be always sitting and aiding the Executive. He moved, after "seven years," to add "to go out in fixed proportion," which was agreed to.[78] Mr. Williamson suggested "six years" as more convenient for rotation than "seven years." Mr. Sherman seconded him. Mr. Read proposed that they should hold their offices "during good behavior." Mr. R. Morris seconded him. General Pinckney proposed "four years." A longer time would fix them at the seat of government. They would acquire an interest there, perhaps transfer their property, and lose sight of the States they represented. Under these circumstances the distant States would labor under great disadvantages. Mr. Sherman moved to strike out "seven years," in order to take questions on the several propositions.

[74] Madison Papers, op. cit., p. 957.
[75] Ibid., p. 958.
[76] Ibid., p. 959.
[77] Ibid., p. 960.
[78] Ibid., p. 960.

On the motion to strike out "seven" the vote stood:[79]

Yeas: Massachusetts, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, 7.

Noes: Pennsylvania, Delaware, Virginia, 3.

Divided: Maryland.

On the question to insert "six years":

Yeas: Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, 5.

Noes: Massachusetts, New York, New Jersey, South Carolina, Georgia, 5.

Divided: Maryland.

On the question for "five years":[80]

Yeas: Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, 5.

Noes: Massachusetts, New York, New Jersey, South Carolina, Georgia, 5.

Divided: Maryland.

On June 26 Mr. Gerham moved to fill the blank with "six years", one-third of the members to go out every second year. Mr. Wilson seconded this motion. General Pinckney opposed six years, in favor of four years. The States, he said, had different interests. Those of the Southern, and of South Carolina in particular, were different from the Northern.[81] If Senators should be appointed for a long term, they would settle in the State where they exercised their functions and would in a little time be rather the representatives of that, than of the State appointing them.[82]

Mr. Read moved that the term be nine years. This would admit of a very convenient rotation, one-third going out triennially. He still preferred "during good behavior", but being little supported in that idea he was willing to take the longest term that could be obtained. Mr. Broom seconded the motion.

Mr. Madison said that in order to judge of the form to be given the institution under consideration it would be proper to take a view of the ends to be served by it. These were: (1) To protect the people against their rulers; and (2) to protect the people against the transient impressions into which they might be led. A people deliberating in a temperate movement and with the experience of other nations before them, in the plan of government most likely to secure their happiness, would first be aware that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men who might watch and check each other. It would occur to such a people that they themselves were liable to temporary errors through want of information as to their true interest, and that men chosen for a short term and employed but a small portion of that in public affairs might err from the same cause. This reflection would naturally suggest that the Government be so constituted that one of its branches might have an opportunity of acquiring a competent knowledge of public interests. The people themselves as well as a numerous body of representatives were liable to err, also, from fickleness and passion. A necessary fence against this danger would be, to select a portion of enlightened

[79] Madison Papers, op. cit., pp. 960-961.
[80] Ibid., p. 961.
[81] Ibid., p. 961.
[82] Ibid., p. 962.

citizens, whose limited number and firmness might seasonably interpose against impetuous counsels.[83]

Mr. Sherman said that government, being instituted for those who live under it, ought to be so constituted as not to be dangerous to their liberties. The more permanency it has, the worse, if it be a bad government. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the government by preserving that good behavior, because it ensures their reelection. In Connecticut elections had been very frequent, yet great stability and uniformity both as to persons and measures had been experienced from the time of its original establishment, a period of more than 130 years. He wished to have provision made for steadiness and wisdom in the system to be adopted; but he thought six or four years would be sufficient. He would be content with either.[84]

Mr. Read wished the small States to consider it to be to their interest to become one people as much as possible, that State attachments should be extinguished as much as possible; that the Senate should be so constituted as to have the feelings of the citizens of the whole.[85]

Mr. Hamilton concurred with Mr. Madison in thinking they were to decide forever the fate of Republican government. He rose, he said, principally to remark that Mr. Sherman seemed not to recollect that one branch of the proposed government was so formed as to render it particularly the guardians of the poorer orders of citizens.[86]

Mr. Gerry admitted the evils arising from a frequency of elections and would agree to give the Senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.[86]

Mr. Wilson said that every nation might be regarded in two relations: (1) To its own citizens; and (2) to foreign nations. It has wars to avoid and treaties to obtain from abroad. The Senate would probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign nations. The true reason why Great Britain had not yet listened to a commercial treaty with us had been because she had no confidence in the stability or efficacy of our Government. Nine years with a rotation would provide those desirable qualities and give our Government an advantage in this respect over monarchy itself. The popular objection to appointing any public body for a long term was that it might by gradual encroachments prolong itself, first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection that as one-third would go out triennially there would always be three divisions holding their places for unequal times and consequently acting under the influence of different views and different impulses.[87]

On the question for nine years, one-third to go out triennially, the vote stood:[88]

Yeas: Pennsylvania, Delaware, Virginia, 3.

Noes: Massachusetts, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, 8.

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[83] Madison Papers, op. cit., pp. 962–63.
[84] Ibid., p. 965.
[85] Ibid., pp. 967–968.
[86] Ibid., p. 968.
[87] Ibid., pp. 968–969.
[88] Ibid., p. 969.

On the question for six years, one-third to go out biennially, the vote stood:[88]

Yeas: Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

Noes: New York, New Jersey, South Carolina, Georgia, 4.

The clause of the fourth resolution "to receive fixed stipends by which they may be compensated for their services" was then considered.

General Pinckney proposed that no salary should be allowed. As the senatorial branch was meant to represent the wealth of the country it ought to be composed of persons of wealth, and if no allowance was to be made, the wealthy alone would undertake the service. He moved to strike out the clause.[89]

Dr. Franklin seconded the motion. He wished the Convention to stand fair with the people. There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended, we might be chargeable with having carved out places for ourselves.

On the question the vote stood:[90]

Yeas: Massachusetts, Connecticut,[91] Pennsylvania, Maryland, South Carolina, 5.

Noes: New York, New Jersey, Delaware, Virginia, North Carolina, Georgia, 6

Mr. Williamson moved to change the expression into these words, to wit, 'to receive a compensation for the devotion of their time to the public service." The motion was seconded by Mr. Elisworth and agreed to by all the States except South Carolina. It seemed to be meant only to get rid of the word "fixed" and leave greater room for modifying the provision on this point.

Mr. Elisworth moved to strike out "to be paid out of the National Treasury" and to insert, "to be paid by their respective States." If the Senate was meant to strengthen the Government, it ought to have the confidence of the States. The States would have an interest in keeping up a representation and would make such provision for supporting the members as would ensure their attendance.[92]

Mr. Madison considered this as a departure from a fundamental principle and subverting the end intended by allowing the Senate a duration of six years. They would if this motion were agreed to hold their places during the pleasure of the State legislatures.[93] One great end of the institution was that being a firm, wise, and impartial body it might not only give stability to the General Government in its operations on individuals but hold an even balance among different States. The motion would make the Senate, like Congress, the mere agents and advocates of State interests and views instead of being the impartial umpires and guardians of justice and the general good.

Mr. Dayton considered the payment of the Senate by the States as fatal to their independence. He was decided for paying them out of the National Treasury.

On the question for payment of the Senate to be left to the States, as moved by Mr. Ellsworth, the vote stood:[94]

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[88] Madison Papers, op. cit., p. 969.
[89] Ibid., p. 970.
[90] Ibid., p. 970.
[91] "Others: Whether Connecticut should not be, no, and Delaware, aye? J. M."
[92] Madison Papers, op. cit., p. 970.
[93] Ibid., p. 971.

Yeas: Connecticut, New York, New Jersey, South Carolina, Georgia, 5.

Noes: Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 6.

Colonel Mason said that one important object in constituting the Senate was to secure the rights of property. To give them weight and firmness for this purpose a considerable duration in office was thought necessary. But a longer term than six years would be of no avail in this respect if needy persons should be appointed.[93] He suggested, therefore, the propriety of annexing to the office the qualification of property. He thought this would be very practicable, as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

The question was then taken whether the words "to be paid out of the National Treasury" should stand. And on this the vote stood:[94]

Yeas: Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, 5.

Noes: Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, 6.

Mr. Butler moved to strike out the ineligibility of Senators to "State offices." Mr. Williamson seconded the motion. Mr. Wilson remarked upon the additional dependence this would create in the Senators on the States. The longer the time allotted to the officer the more complete would be the dependence if it existed at all.

General Pinckney held that if the Senate was to be appointed by the States it ought in pursuance of the same idea to be paid by the States, and that the States ought not be barred from the opportunity of calling members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

Mr. Williamson moved a resolution so worded as to admit of the two following questions: (1) Whether the members of the Senate should be ineligible to, and incapable of, holding offices *under the United States*; or (2) whether, etc., *under the particular States*. On the question to postpone, in order to consider Mr. Williamson's resolution, the vote stood:[95]

Yeas: Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8.

Noes: New York, New Jersey, Massachusetts, 3.

Mr. Gerry and Mr. Madison moved to add to Mr. Williamson's first question, "and for one year thereafter."

On this amendment the vote stood:[95]

Yeas: Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, 7.

Noes: Massachusetts, New Jersey, Pennsylvania, Georgia, 4.

On Mr. Williamson's first question as amended, namely, whether the members should be ineligible to, and incapable of, holding offices under the United States for one year thereafter, it was agreed to unanimously.

On the second question, as to ineligibility, etc., to *State offices*, the vote stood:[95]

Yeas: Massachusetts, Pennsylvania, Virginia, 3.

Noes: Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 8.

[93] Madison Papers, op. cit., p. 971.
[94] Ibid., p. 972.
[95] Ibid., p. 973.

The fifth resolution, "that each branch have the right of originating acts" was agreed to unanimously.[95]

On June 27 Mr. Rutledge moved the consideration of the seventh and eighth resolutions, relating to the rules of suffrage in the two branches.[96] For two days the Convention debated the issue of representation in the National Congress with all the important significance of the relation of the States to the proposed Federal Government and to each other.

On June 29 Dr. Johnson said that as in some respects the States were to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other ought to be combined; and that in *one* branch the *people* ought to be represented, in the *other*, the *States*.[97]

After extensive debate, much in the nature of that which had proceeded for several days Mr. Ellsworth moved "that the rule of suffrage in the second branch be the same with that established by the Articles of Confederation." He was not sorry that a vote had determined against this rule in the first branch. He hoped it would become the ground of compromise with regard to the second branch. We were partly national, partly federal. Proportional representation in the first branch was conformable to the national principle and would secure the large States against the small. An equality of voices was conformable to the federal principle and was necessary to secure the small States against the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other.[98]

Mr. Baldwin thought the second branch ought to be the representation of property and that in forming it some reference ought to be had to the relative wealth of their constituents and to the principles on which the Senate of Massachusetts was constituted.[99]

On June 30 Mr. Wilson stated that he did not expect such a motion as Mr. Ellsworth proposed after the establishment of the contrary principle in the first branch.[99] Mr. Wilson said that in supposing the preponderance secured to the majority in the first branch had, as in the opinion of Mr. Ellsworth, removed the objections to an equality of votes in the second branch for the security of the minority, the case had been extremely narrowed. Such an equality would enable the minority to control in all cases the sentiments and interests of the majority. Seven States would control six; seven States, according to estimates, composed twenty-four-ninetieths of the whole people. It would then be in the power of less than one-third to overrule two-thirds whenever a question should happen to divide the States in that manner. Could they forget for whom they were forming a Government? Was it for men or for imaginary beings called States? Would their constituents be satisfied with being told that one-third compose the greater number of States? On every principle the rule of suffrage ought to be the same in the second as in the first branch.[1]

Mr. Madison said that it was continually urged that an equality of votes in the second branch was not only necessary to secure the small,

[95] Madison Papers, op. cit., p. 973.
[96] Ibid., p. 987.
[97] Ibid., p. 997.
[98] Ibid., p. 998.
[99] Ibid., p. 1000.
[1] Ibid., p. 1001.

but would be perfectly safe to the large States, whose majority in the first branch was an effectual bulwark. But notwithstanding this apparent defense the majority of States might still injure the majority of the people. They could: (1) Obstruct the wishes and interests of the majority; (2) extort measures repugnant to the wishes and interest of the majority; (3) impose measures adverse thereto,[2] as the second branch would probably exercise some great powers in which the first would not participate. He contended that the States were divided into different interests not by their difference of size but by other circumstances. Climate and the having or not having slaves, concurred in forming the great division of interests in the United States. It did not lie between the large and small States. It lay between Northern and Southern; and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred to him was that instead of proportioning the votes of the States in both branches to the respective numbers of their inhabitants, computing the slaves in the ratio of 5 to 3, they should be represented in one branch according to the number of free inhabitants only, and in the other according to the whole number, counting the slaves as free. By this arrangement the southern scale would have the advantage in one House, the northern in the other. He had been restrained from proposing this expedient by two considerations; one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself, and the other was the inequality of powers that must be vested in the two branches, and which would destroy the equilibrium of interests.[3]

Mr. Davie thought the report of the committee allowing the legislatures to choose the Senate and establishing a proportional representation in it seemed impracticable. There would, according to this rule, be 90 members at the outset, and the number would increase as new States were added. It was impossible that so numerous a body could possess the activity and other qualities required in it. The appointment of the Senate by electors chosen by the people for that purpose was, he conceived, liable to an insuperable difficulty.[3] The larger counties or districts, thrown into a general district, would certainly prevail over the smaller counties or districts, and merit in the latter would be excluded altogether. The report, therefore, seemed to be right in referring the appointment to the legislatures, whose agency in the general system did not appear to him objectionable, as it did to some others. Local prejudices and interests which could not be denied to exist would find their way into the national councils, whether the representatives should be chosen by the legislatures or by the people themselves. If proportional representation was attended with insuperable difficulties, making the Senate the representative of the States looked like bringing us back to Congress again and shutting out of all the advantages expected from it. He could not vote for any plan for the Senate yet proposed. He thought there were extremes on both sides. We were partly federal, partly national, in our Union. He did not see why government might not in some respects operate on the States, in others on the people.[4]

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[2] Madison Papers, op. cit., p. 1005.
[3] Ibid., p. 1007.
[4] Ibid., p. 1008.

Mr. Wilson admitted the question concerning the number of Senators to be embarrassing. If the smallest States were allowed one, and the others in proportion, the Senate would certainly be too numerous. He looked forward to the time when the smallest State would contain a hundred thousand souls at least. Let there be one Senator for every hundred thousand souls, and let the States not having that number of inhabitants be allowed one. He was willing himself to submit to this temporary concession to the small States, and threw out the idea as a ground of compromise.[5]

Dr. Franklin said the diversity of opinion turned upon two points. If representation was to be proportional, the small States would contend their liberties would be in danger. If representation was to be equal, the large States would say their money would be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner, both sides here must part with some of their demands in order to join in some accommodating proposition. He had prepared one which he would read. His proposal follows:[6]

That the Legislatures of the several States shall choose and send an equal number of delegates, namely, ———, who are to compose the second branch of the General Legislature.

That in all cases or questions wherein the sovereignty of individual States may be affected, or whereby their authority over their own citizens may be diminished, or the authority of the General Government within the several States augmented, each State shall have equal suffrage.

That in the appointment of all civil officers of the General Government, in the election of whom the second branch may by the constitution have part, each State shall have equal suffrage.

That in fixing the salaries of such officers, and in all allowances for public services, and generally in all appropriations and dispositions of money to be drawn out of the general Treasury; and in all laws for supplying that Treasury, the Delegates of the several States shall have suffrage in proportion to the sums which their respective States do actually contribute to the Treasury.

Mr. King observed that the simple question was whether each State should have an equal vote in the second branch; that it must be apparent to those gentlemen who liked neither the motion for this equality, nor the report as it stood, that the report was as susceptible of melioration as the motion; that a reform would be nugatory and nominal only if the proposed Senate were to be made merely another Congress; that if the adherence to an equality of votes was fixed and unalterable there could not be less obstinacy on the other side; that we were in fact cut asunder already and it was vain to shut our eyes against it. He was filled with astonishment that if we were convinced that every man in America was secured in all his rights we should be ready to sacrifice this substantial good to the phantom of State sovereignty.[6] His feelings were more harrowed and his fears more agitated for his country than he could express; he conceived this to be the last opportunity of providing for its liberty and happiness. He could not but repeat his amazement that when a just government founded on a fair representation of the people of America was within reach we should renounce the blessing from an attachment to the ideal freedom and importance of States. He might prevail on himself to accede to some such expedient as had been hinted by Mr. Wilson; but he never could listen to an equality of votes as proposed in the motion.

[5] Madison Papers, op. cit., p. 1009.
[6] Ibid., p. 1010.

Mr. Dayton said that it should have been shown that the evils we had experienced had proceeded from the equality now objected to; and that the seeds of dissolution for the State governments are not sown in the general government. He considered the system on the table as a novelty, an amphibious monster; and was persuaded that it never would be received by the people.

Mr. Martin would never confederate if it could not be done on just principles.

Mr. Madison would acquiesce in the concession hinted by Mr. Wilson on condition that a due independence should be given to the Senate.[7] The plan in its present shape made the Senate absolutely dependent on the States. The Senate, therefore, was only another edition of Congress. He knew the faults of that body and had used a bold language against it. Still he would preserve the State rights as carefully as the trial by jury.

Mr. Bedford contended that there was no middle way between a perfect consolidation and a mere confederacy of the States. The first was out of the question; and in the latter they must continue, if not perfectly, yet equally, sovereign. Were not the larger States evidently seeking to aggrandize themselves at the expense of the small? They thought, no doubt, that they had right on their side, but interest had blinded their eyes. Georgia, though a small State, was actuated by the prospect of soon being a great one.

Mr. Bedford said that South Carolina was actuated by present interest and future prospects. She hoped to see the other States cut down to her own dimensions. North Carolina had the same motives of present and future interest. Virginia followed. Maryland was not on that side of the question. Pennsylvania had a direct and future interest in the part she took. Could it be expected that the small States would act from pure disinterestedness?[8] An exact proportion in the representation was not preserved in any one of the States. Would it be said that an inequality of power would not result from an inequality of votes? The three large States had a common interest to bind them together in commerce. But whether a combination, or a competition should take place among them, in either case the small States must be ruined. Would the smaller States ever agree to the proposed degradation? It was not true that the people would not agree to enlarge the powers of the present Congress. The language of the people had been that Congress ought to have the power of collecting an impost, and of coercing the States where it might be necessary. The little States were willing to observe their engagements but would meet the large ones on no ground but that of confederation. They had been told with a dictatorial air, he said, that this was the last moment for a fair trial in favor of a good Government.[9] It would indeed be the last if the propositions reported from the Committee were to go forth to the people. He was under no apprehensions. The large States dared not dissolve the Confederation. If they did the small ones would find some foreign ally of more honor and good faith who would take them by the hand and do them justice. He did not mean by this, to intimidate or alarm. It was a natural consequence which ought to be avoided by enlarging the Federal powers, not by annihilating the Federal system. That was what the people ex-

[7] Madison Papers, op. cit., p. 1011.
[8] Ibid., p. 1012.
[9] Ibid., p. 1013.

pected. All agreed in the necessity of a more efficient Government, and why not make such a one as they desired?

Mr. Ellsworth said that under a National Government he would participate in the national security, but that was all. What he wanted was domestic happiness. The National Government could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes, therefore, for the preservation of his rights, to the State governments. From these alone he could derive the greatest happiness he expected in life.

Mr. King was for preserving the States in a subordinate degree, and as far as they could be necessary for the purposes stated by Mr. Ellsworth. He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions.[10] Expedients might be devised that would give them all the security the nature of things would admit of. In the establishment of societies the Constitution was to the legislature what laws were to individuals. As the fundamental rights of individuals were secured by express provisions in the State constitutions why might not a like security be provided for the rights of States in the National Constitution? He thought it sufficient to say that if fundamental articles of compact are not sufficient defense against physical power neither would there be any safety against it, if there were no compact.[11]

On Mr. Ellsworth's motion to allow each State one vote in the second branch, the vote stood:[12]

Yeas: Connecticut, New York, New Jersey, Delaware, Maryland, 5.

Noes: Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, 5.

Divided: Georgia.

Mr. Pinckney thought an equality of votes in the second branch inadmissible. At the same time candor obliged him to admit that the larger States would feel a partiality to their citizens and give them a preference in appointments; that they might also find some common points in their commercial interests and promote treaties favorable to them. There was a real distinction between northern and southern interests. North Carolina, South Carolina, and Georgia, in their rice and indigo, had a peculiar interest which might be sacrificed. How should the larger States be prevented from administering the General Government as they pleased without themselves being unduly subjected to the will of the smaller?[13] He was extremely anxious that something be done. Congress had failed in almost every effort for an amendment of the Federal system. Nothing but the appointment of the convention had prevented a dissolution. He read his motion to form the States into classes, with an apportionment of Senators among them.[14] (Art. IV.)

General Pinckney was willing to have the motion considered. He did not entirely approve it. He liked Dr. Franklin's motion better. Some compromise seemed to be necessary, the States being exactly divided on the question for an equality of votes in the second branch. He proposed that a committee consisting of a member from each State should be appointed to devise and report some compromise.

[10] Madison Papers, op. cit., p. 1014.
[11] Ibid., p. 1015.
[12] Ibid., p. 1016.
[13] Ibid., p. 1016.
[14] Ibid., p. 1017.

Mr. Luther Martin had no objection to a commitment, but no modifications whatever could reconcile the smaller States to the least diminution of their equal sovereignty.

Mr. Sherman observed that they were at a full stop, and nobody, he supposed, meant that they should break up without doing something. He thought a committee would most likely hit upon some expedient.[15]

Mr. Gouverneur Morris thought a committee advisable, as the Convention had been equally divided. The mode of appointing the second branch tended, he was sure, to defeat the object of it. This object was to check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the State legislatures, precipitation—in Congress, changeableness—in every department, excesses against personal liberty, private property, and personal safety. Abilities and virtue were equally necessary in both branches. But something more was wanted. The checking branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. The checking branch must have great personal property; it must have the aristocratic spirit; it must love to lord it through pride. This checking branch should be independent. The aristocratic body should be as independent, and as firm, as the democratic. If its members were to revert to a dependence on the democratic choice, the democratic scale would preponderate. All the guards contrived by America had not restrained the senatorial branches of the legislatures from a servile complaisance to the democratic.[16] If the second branch was to be dependent, it would be better without it. To make it independent, it should be for life. It would then do wrong, it would be said. He believed so; he hoped so. The rich would strive to establish their dominion, and enslave the rest. They always did. They always would. The proper security against them is to form them into a separate interest. The two forces would then control each other. Were the rich to mix with the poor in a commercial country they would establish an oligarchy. Take away commerce, and the democracy would triumph. By combining and setting the aristocratic interest apart, popular interest would be combined against it. There would be mutual check and national security. Independence for life involved necessary permanency. He disliked the exclusion of the second branch from holding offices. It was dangerous.[17] It deprived the Executive of the principal source of influence. If the son, the brother, or the friend could be appointed, the danger might even be increased, as the disqualified father could then boast of a disinterestedness which he did not possess. Should the best, the most able, the most virtuous citizens not be permitted to hold office? Who would hold them? He likewise was against paying the Senators. (See Madison Papers, Gilpin edition, vol. II, Washington, 1840, p. 1020.) He contended the Executive should appoint the Senate and fill up vacancies. The members being independent, and appointed for life, might be taken from one place as from another. He did not hesitate to say that loaves and fishes must bribe the demagogues. They must be made to expect higher offices under the general rather than under the State governments. A Senate for life would be a noble bait. Without such

[15] Madison Papers, op. cit., p. 1017.
[16] Ibid., p. 1018.
[17] Ibid., p. 1019.

captivating prospects the popular leaders would oppose and defeat the plan. He perceived that the first branch was to be chosen by the people of the States, the second by those chosen by the people. Would this not be a government by the States, a government by compact? This was going back to mere treaty. It was no government at all. It was altogether dependent upon the States and would act over again the part which Congress had acted. A firm government alone could protect their liberties. He feared the influence of the rich. The people never act from reason alone. The rich would take advantage of their passions and make them the instruments for oppressing them. The result would be violent despotism. The schemes of the rich would be favored by the extent of the country. The people in distant parts could not communicate and act in concert. They would be the dupes of those who have more knowledge and intercourse. The only security against encroachments would be a select and sagacious body of men instituted to watch against them on all sides.

Mr. Randolph favored the commitment though he did not expect much benefit from the expedient. He reminded the small States that if the large States should combine there would be a check in the revisionary power of the Executive.[18] In order to render this still more effectual he would agree that in the choice of an Executive each State should have an equal vote. He was persuaded that two such opposite bodies as Mr. Morris had planned could never long coexist. Dissensions would arise as had been seen even between the Senate and House of Delegates in Maryland; appeals would be made to the people; and in a little time commotions would be the result. He was far from thinking the large States could subsist of themselves, any more than the small; an avulsion would involve the whole in ruin. He was determined to pursue such a scheme of government as would secure against such a calamity.

Mr. Strong favored the commitment. He hoped the mode of constituting both branches would be referred. If they should be established on different principles contentions would prevail and there would never be a concurrence in necessary measures.

Dr. Williamson said that if they did not concede on both sides, their business would soon be at an end. He approved of the commitment, supposing that as the committee would be a smaller body a compromise would be pursued with more coolness.

Mr. Wilson objected to the Committee because it would decide according to the rule of voting which was opposed on one side. Experience in Congress had proved the inutility of committees consisting of Members from each State. Mr. Lansing would not oppose the commitment, although expecting little advantage from it. Mr. Madison opposed the commitment.[19] Any scheme of compromise that might be proposed in Committee might as easily be proposed in the House.

Mr. Gerry said something must be done or they would disappoint not only America but the whole world. Were the Union to fail they would be without an umpire to decide controversies and must be at the mercy of events. What would become of their foreign

[18] Madison Papers, op. cit., p. 1021.
[19] Ibid., p. 1022.

debts, of their domestic debts? Concessions must be made on both sides. Without concessions the constitutions of the several States would never have been formed.

On the question for committing generally the vote stood:[20]

Yeas: Massachusetts, Connecticut, New York, Pennsylvania, Maryland Virginia, North Carolina South Carolina, Georgia, 9.

Noes: New Jersey, Delaware, 2.

On the question for committing it "to a member from each State" the vote stood:[20]

Yeas: Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

Noes: Pennsylvania, 1.

The committee, elected by ballot, consisted of Messrs. Gerry, Ellsworth, Yates, Patterson, Bedford, Martin, Mason, Davy, Rutledge, Baldwin, and Dr. Franklin.[20]

On July 5 the Committee reported the following proposals with their recommendation on the condition that both be generally adopted.[21]

1. That in the first branch of the Legislature each of the States now in the Union shall be allowed one member for every 40,000 inhabitants, of the description reported in the seventh Resolution of the Committee of the Whole House; that each State not containing that number shall be allowed one member; that all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public Treasury but in pursuance of appropriations to be originated in the first branch.

2. That in the second branch, each State shall have an equal vote.

Mr. Gorham wished to hear some explanations touching the grounds on which the propositions mutually conditioned had been estimated. Mr. Gerry said that the Committee were of different opinions and agreed to the report merely in order that some ground of accommodation could be proposed. Those opposed to the equality of votes had assented only conditionally; if the other side did not generally agree they would be under no obligation to support the report. Mr. Wilson thought the committee had exceeded their powers. Mr. Madison could not regard the privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If seven States in the upper branch wished a bill to be originated they might surely find some member from some of the same States in the lower branch, who would originate it.[22]

The restriction as to amendment was of as little consequence. Amendments could be handed privately by the Senate to members in the other House. Bills could be negatived so that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the first branch, the use of that body as a check would be lost. If the first branch should yield to that of the Senate the privilege would be nugatory. Experience had also shown both in Great Britain and the States having a similar regulation that it was a source of frequent and obstinate altercations. The Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States and the minority of the people of the United States, or of displeasing these by justly gratifying the larger

[20] Madison Papers, op. cit., p. 1023.
[21] Ibid., p. 1024.
[22] Ibid., pp. 1025–1026.

States and the majority of the people. The Convention, with justice and a majority of the people on their side, had nothing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their constituents.[23] The Convention ought to pursue a plan which would bear the test of examination, which would be espoused and supported by the enlightened and impartial part of America, and which they could themselves vindicate and urge. He was not apprehensive that the people of the small States would obstinately refuse to accede to a government founded on just principles and promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other States rather than submit to such a government, much less could he suspect that she would pursue the rash policy of courting foreign support, which Mr. Bedford, one of her Representatives, had suggested; or if she should, that any foreign nation would be so rash as to hearken to the overture. As little could he suspect that the people of New Jersey would choose rather to stand on their own legs and bid defiance to events than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the commerce of the neighboring States. A review of other States would prove that there was as little reason to apprehend an inflexible opposition elsewhere.[24] If the principal States, comprehending a majority of the people of the United States, should concur in a just and judicious plan, he had the firmest hopes that all the other States would by degrees accede to it.

Mr. Butler did not consider the privilege concerning money bills as of any consequence. He urged that the second branch ought to represent the States according to their property.

Mr. Gouverneur Morris thought the form as well as the matter of the report objectionable. It seemed to render amendment impracticable; it seemed to involve a pledge to agree to the second part, if the first should be agreed to. Much had been said of the sentiments of the people. They were unknown. They could not be known.[25] All that could be inferred was that if the plan recommended was reasonable and right all who had reasonable minds and sound intentions would embrace it.

Should the larger States agree and the smaller refuse, the opponents of the system in the smaller States would no doubt make a party and a noise for a time, but the ties of interest, of kindred, and of common habits which connect them with the other States would be too strong to be easily broken. The country must be united. If persuasion did not unit it the sword would. He could not think the report in any respect calculated for the public good.[26] As the second branch was now constituted there would be constant disputes and appeals to the States, which would undermine the General Government, and control and annihilate the first branch. If Delegates from Massachusetts and Rhode Island in the upper house were to disagree, and if the former were outvoted, they would immediately declare that their State would not abide by the decision. The same would happen as to Virginia and other States. State attachments and State importance had been the

[23] Madison Papers, op. cit., p. 1026.
[24] Ibid., p. 1027.
[25] Ibid., p. 1028.
[26] Ibid., p. 1029.

bane of the country.[27] Mr. Bedford said the lesser States thought it necessary to have security somewhere. Security was thought necessary for the Executive magistrate of the proposed government, who was given a sort of negative on the laws; was it not of more importance that the States be protected? In order to obtain this security the smaller States conceded as to the constitution of the first branch and as to money bills. If they were not to be gratified by corresponding concessions as to the second branch was it to be supposed they would ever accede to the plan? The condition of the United States required that something should be immediately done. It would be better that a defective plan should be adopted than that none should be recommended. He saw no reason why defects might not be supplied by meetings ten, fifteen, or twenty years hence.[28]

Mr. Gerry, though assenting to the report in committee, had very material objections to it. We were in a peculiar situation.[29] We were neither the same nation, nor different nations. We ought not therefore to pursue the one or the other of these ideas too closely. If no compromise should take place he foresaw a secession. If they were unable to come to some agreement among themselves some foreign sword would probably do the work for them.[30]

On July 6, the report being still before the Convention, Mr. Davy thought that wealth or property ought to be represented in the second branch, and numbers in the first branch.[31]

On the clause relating to the originating of money bills, Mr. Gouverneur Morris was opposed to a restriction of this right in either branch, considered merely in itself and unconnected with the matter of representation in the second branch. It would disable the second branch from proposing its own money plans and give the people an opportunity of judging, by comparison, of the merits of those proposed by the first branch.

Mr. Wilson could see nothing like a concession on the part of the small States here. If either branch were indiscriminately to have the right of originating, the reverse of the report would, he thought, be most proper, since it was a maxim that the least numerous body was the fittest for deliberation—the most numerous, for decision. He observed that this discrimination had been transcribed from the British into several American constitutions. On examination of the American experiments it would be found to be a trifle light as air; nor could he ever discover the advantage of it in the parliamentary history of Great Britain.[32]

Mr. Williamson thought that if the privilege were not common to both branches it ought rather to be confined to the second, as the bills in that case would be more narrowly watched than if they originated with the branch having most of the popular confidence.

Mr. Mason said that the consideration which weighed with the Committee was that the first branch would be the immediate representatives of the people; the second would not. Should the latter have the power of giving away the people's money they might soon forget the source from whence they received it. We might soon have an aristocracy. He was a friend to proportional representation in both

[27] Madison Papers, op. cit., p. 1030.
[28] Ibid., p. 1031.
[29] Ibid., p. 1032.
[30] Ibid., p. 1033.
[31] Ibid., p. 1039.
[32] Ibid., p. 1041.

branches, but supposed that some points must be yielded for the sake of accommodation.

Mr. Wilson asked how the power of the first branch was increased or the second diminished by giving the proposed privilege to the former? Where is the difference, in which branch it begins, if both must in the end concur?

Mr. Gerry would not say that the concession was a sufficient one on the part of the small States.[33] It would make it a constitutional principle that the second branch were not possessed of the confidence of the people in money matters, which would lessen their weight and influence. If the second branch were dispossessed of the privilege they would be deprived of the opportunity which their continuance in office three times as long as the first branch would give them, of making three successive essays in favor of a particular point.

Mr. Pinckney thought it evident that the concession was wholly on the side of the large States; the privilege of originating money bills being of no account.

Mr. Gouverneur Morris said that as to the alarm of an aristocracy which had been sounded, his creed was that there never was nor ever would be a civilized society without an aristocracy. His endeavor was to keep it as much as possible from doing mischief. The restriction if it really operated would deprive them of the services of the second branch in digesting and proposing money bills, of which it would be more capable than the first branch. It would take away the responsibility of the second branch, the great security for good behavior. It would always leave a plea as to an obnoxious money bill that it was disliked but could not be constitutionally amended, nor safely rejected. It would be a dangerous source of disputes between the two Houses. They should either take the British Constitution altogether or make one for themselves.[34] Every law, directly or indirectly, takes money out of the pockets of the people. What use could be made of such a privilege in case of a great emergency? Suppose an enemy at the door and money instantly and absolutely necessary for repelling him, might not the popular branch avail itself of this duress, to extort concessions from the Senate, destructive of the Constitution itself? The restriction in his opinion would be either useless or pernicious.

Dr. Franklin could not but remark that it was always of importance that the people should know who had disposed of their money and how it had been disposed of. He thought this end could best be attained if money affairs were to be confined to the immediate representatives of the people. As to the danger or difficulty which might arise from a negative in the second branch where the people would not be proportionately represented it might easily be got over by declaring that there should be no such negative; or if that would not do, by declaring that there should be no such branch at all.[35]

Mr. Wilson said the difficulties and disputes would increase with attempts to define and obviate them. Although he approved the principles laid down by Dr. Franklin, as to the expediency of keeping the people informed of their money affairs, he thought they would know as much and be as well satisfied in one way as in the other.

[33] Madison Papers, op. cit., p. 1042.
[34] Ibid., p. 1043.
[35] Ibid., p. 1044.

General Pinckney remarked that the restriction as to money bills had been rejected on the merits singly considered by eight States against three; and that the very States which now called it a concession were then against it as nugatory or improper in itself. On the question whether the clause relating to money bills in the report of the committee consisting of a member from each State should stand as part of the report, the vote stood: [36]

Yeas: Connecticut, New Jersey, Delaware, Maryland, North Carolina, 5.

Noes: Pennsylvania, Virginia, South Carolina, 3.

Divided: Massachusetts, New York, Georgia, 3.

On July 7 the Convention took up the question as to whether the clause "allowing each State one vote in the second branch" should stand as a part of the report.

Mr. Gerry regarded it as a critical question. He had rather agree to it than have no accommodation.

Mr. Sherman thought an equal vote in the second branch would be likely to give the General Government, which he supposed it was the wish of everyone to see established, necessary vigor.[37] The small States had more vigor in their governments than the large ones; thus, the more influence the large ones had the weaker would be the Government. If voting in the second branch was to be by States and each State was to have an equal vote there must always be a majority of States as well as a majority of the people on the side of public measures, and the Government would have decision and efficacy. If this were not the case in the second branch there might always be a majority against public measures and the difficulty of compelling them to abide by the public determination would render the Government feebler than it had ever been.

On the question the vote stood:[38]

Yeas: Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, 6.

Noes: Pennsylvania, Virginia, South Carolina, 3.

Divided: Massachusetts, Georgia, 2.

Mr. Gerry thought it would be proper to proceed to enumerate and define the powers to be vested in the General Government before a question on the report should be taken as to the rule of representation in the second branch; Mr. Madison observed that it would be impossible to say what powers could be safely and properly vested in the Government before it was known in what manner the States were to be represented.

Mr. Patterson would not decide whether the privilege concerning money bills were a valuable consideration or not; but he considered the mode and rule of representation in the first branch as fully so; and that after that issue had been established the small States would never be able to defend themselves without an equality of votes in the second branch. There was no other ground of accommodation. He would meet the large States on that ground and on no other. He would vote against the report, because it yielded too much.

Mr. Gouverneur Morris was against the report because it maintained the improper constitution of the second branch. It made it another Congress, a mere whisp of straw.[39] He was unable to see how the new

[36] Madison Papers, op. cit., p. 1045.
[37] Ibid., p. 1046.
[38] Ibid., p. 1047.
[39] Ibid., p. 1048.

Government was to protect the aggregate interest. Among the many provisions which had been urged he had seen none for supporting the dignity and splendor of the American empire. One of their greatest misfortunes had been that the great objects of the Nation had been sacrificed constantly to local views. There was no check in the Senate, unless it was to keep the majority of the people from injuring particular States. But particular States ought to be injured for the sake of a majority of the people in case their conduct should deserve it. On the occasion of the Declaration of Independence, the small States, aware of the necessity of preventing anarchy and taking advantage of the moment extorted from the large ones an equality of votes. Standing now on that ground, they were demanding, under the new system greater rights, as men, than their fellow citizens of the large States.[40] The proper answer to them was that the same necessity of which they formerly took advantage did not now exist; and that the large States were now at liberty to consider what was right, rather than what might be expedient. He must be against the Senate being drawn from the States in equal portions.[41]

On July 9 Mr. Gouverneur Morris delivered a report from the committee of five members to whom had been committed the clause in the report of the committee consisting of a member from each State, stating the proper ratio of Representatives in the first branch to be as 1 to every 40,000 inhabitants. During the discussion of the matter Mr. Madison reminded Mr. Patterson that his doctrine of representation, which was in its principle the genuine one, must forever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do if the people of all the States were collectively met.[42] He suggested as a proper ground of compromise that in the first branch the States should be represented according to their number of free inhabitants; and that in the second, which had for one of its primary objects the guardianship of property, according to the whole number, including slaves. On July 10 the Convention proceeded to the discussion of representation in the first branch, and on conclusion of the debate and after a vote Mr. Broome gave notice of his intention to claim for his State an equal voice in the second branch, which he thought could not be denied after the concession which the small States had made as to the first branch.[43]

On July 14 an effort was made to bring the report before the Convention in its entirety. Mr. Luther Martin urged the consideration of the entire report. He did not like many parts of it. He did not like having two branches.

Mr. Wilson thought that the privilege of originating money bills was not considered by any as of much moment and by many as improper. The equality of votes was a point of such critical importance that every opportunity ought to be allowed for discussing and collecting the mind of the Convention upon it.[44] In tracing the progress of the report Mr. Wilson said that on the matter of an equality of votes there had been two-thirds in opposition; that this fact would soon be known and that it would appear that this fundamental point had been carried by one-third against two-thirds.[44]

[40] Madison Papers, op. cit., p. 1049.
[41] Ibid., pp. 1050–1051.
[42] Ibid., p. 1055.
[43] Ibid., p. 1063.
[44] Ibid., p. 1097.

Mr. Luther Martin denied that there were two-thirds against the equality of votes. The States that pleased to call themselves large were the weakest in the Union. He was for letting a separation take place if they desired it. He had rather there should be two confederacies than one founded on any other principle than an equality of votes in the second branch at least.[44]

Mr. Gerry favored a reconsideration with the view of providing that the States should vote per capita, which would prevent delays and inconveniences that had been experienced in Congress. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the cornerstone of the accommodation. Reconsideration was tacitly agreed to.

Mr. Pinckney moved that instead of an equality of votes the States should be represented in the second branch as follows: [45]

New Hampshire, 2 Members; Massachusetts, 4 Members; Rhode Island, 1 Member; Connecticut, 3 Members; New York, 3 Members; New Jersey, 2 Members; Pennsylvania, 4 Members; Delaware, 1 Member; Maryland, 3 Members; Virginia, 5 Members; North Carolina, 3 Members; South Carolina, 3 Members; Georgia, 2 Members; total, 36 Members.

Mr. Wilson seconded the motion.

Mr. Dayton said the smaller States could never give up their equality. He would in no event yield that security for their rights. Mr. Sherman urged the equality of votes, not so much as a security for the small States as for the State Governments, which could not be preserved unless they were represented and had a negative in the General Government.[46] He had no objection to the members in the second branch voting per capita. Mr. Madison concurred in the motion of Mr. Pinckney as a reasonable compromise. Mr. Gerry said that though an accommodation must take place it was apparent from what had been said that it could not do so on the ground of the motion.

Mr. King considered the proposed Government as substantially and formally a General and National Government over the people of America. There would never be a case in which it would act as a Federal Government on the States and not on individual citizens. It is a clear principle that in a free government those who are the objects of government ought to influence its operations. He could conceive no reason why the same rule of representation should not prevail in the second as in the first branch. Two objections had been raised against it, drawn from the terms of the existing compact and from a supposed danger to the smaller States.[47] The General Government could never wish to intrude on the State Governments. There could be no temptation. None had been pointed out. According to the idea of securing the State Governments there ought to be three distinct legislative branches. The second was admitted to be necessary and was actually meant to check the first branch, to give more wisdom, system, and stability to the Government, and ought clearly, as it was to operate on the people, to be proportioned to them. For the third purpose of securing the States there ought then to be a third branch, representing the States as such and guarding by equal votes their rights and dignities. It was his firm belief that Massachusetts would never be prevailed upon to yield to an

[44] Madison Papers, op. cit., p. 1097.
[45] Ibid., p. 1098.
[46] Ibid., p. 1098.
[47] Ibid., p. 1099.

equality of votes.[48] He preferred doing nothing rather than to allow an equal vote to all the States.

Mr. Strong said that the Convention had been much divided in opinion. In order to avoid the consequences of it an accommodation had been proposed. A committee had been appointed, and though some of the members of it were averse to an equality of votes a report had been made in favor of it. It was agreed that Congress was nearly at an end.[49] He thought the small States had made considerable concession in the article of money bills, and that they might naturally expect some concession on the other side.

Mr. Madison expressed his apprehensions that if the proper foundation of government was destroyed by substituting an equality in place of proportional representation no proper superstructure would be raised. If the small States really wished for a government armed with the powers necessary to secure their liberties and to enforce obedience on the larger members as well as themselves he could not help thinking them extremely mistaken in the means. It had been very properly observed that representation was an expedient by which the meeting of the people themselves was rendered unnecessary, and that the Representatives ought therefore to bear a proportion to the votes which their constituents, if convened, would respectively have.[50] But if the Government would be partly national, in all cases where the General Government was to act on the people let the people be represented and the votes be proportional; but where the Government was to act on the States as such in like manner as Congress then acted on them let the States be represented and the votes be equal. This was the true ground of compromise, if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the General Government was not to operate on the people individually. The practicability of making laws with coercive sanctions for the States as political bodies had been exploded on all hands. The people of the large States would secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the Government, they would probably accede to no government which did not depend for its efficacy on their voluntary cooperation. In this case they would indirectly secure their object. The existing confederacy proved that where the acts of the General Government were to be executed by the particular governments the latter had a weight in proportion to their importance.[51] No one would say that either in Congress or out of Congress, Delaware had equal weight with Pennsylvania. He enumerated the objections against an equality of votes in the second branch, notwithstanding the proportional representation in the first, as follows:

1. The minority could negative the will of the majority of the people.

2. They could extort measures by making them a condition of their assent to other necessary measures.

3. They could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate.

4. The evil instead of being cured by time would increase with every new State that should be admitted, as they must all be admitted on the principle of equality.

[48] Madison Papers, op. cit., p. 1100.
[49] Ibid., p. 1101.
[50] Ibid., p. 1102.
[51] Ibid., p. 1103.

5. The perpetuity it would give to the preponderance of the Northern against the Southern scale was a serious consideration.

It seemed now to be pretty well understood that the real difference of interests lay not between the large and small, but between the Northern and Southern States. The institution of slavery and its consequences formed the line of discrimination. There were five States on the Southern, eight on the Northern side of the line. Should a proportional representation take place, it was true, the Northern would still outnumber the other; but not in the same degree at this time. Every day would tend towards an equilibrium.[52]

Mr. Wilson said that if equality in the second branch was an error that time would correct he should be less anxious to exclude it, being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error it ought by all means to be avoided. The justice of the general principle of proportional representation had not in argument at least been contradicted. But it was said that a departure from it, so far as to give the States an equal vote in one branch of the legislature, was essential to their preservation. That the States ought to be preserved he admitted. But did it follow that an equality of votes was necessary for the purpose? An equal vote was not necessary, so far as he could see, and was liable among other things to the objection of inactivity—the great fault of the existing Confederacy. It had never been a complaint against Congress that they governed overmuch. The complaint had been that they had governed too little. To remedy that defect they had been sent to the Convention. The equality of votes proposed as a cure carried directly to Congress, to the system which it was their duty to rectify.[53] The small States could not act by virtue of this equality but they might control the Government as they had done in Congress. This very measure was here prosecuted by a minority of the people of America. He was anxious to unite all the States under one Government.[54]

On the question to agree to Mr. Pinckney's motion to allow New Hampshire, two; Massachusetts, four, etc., the vote stood: [55]

Yeas: Pennsylvania, Maryland, Virginia, South Carolina, 4.

Noes: Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, Georgia, 6.

On July 16 the Convention agreed to vote on the whole report as amended, and including an equality of votes in the second branch, and on the question to agree to the report the vote stood: [55]

Yeas: Connecticut, New Jersey, Delaware, Maryland, North Carolina, 5.

Noes: Pennsylvania, Virginia, South Carolina, Georgia, 4.

Divided: Massachusetts, 1.

The report as passed read as follows:

* * * *Resolved*, that all bills for raising or appropriating money and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature of the United States; and shall not be altered or amended in the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated in the first branch.[56]

Resolved, that in the second branch of the Legislature of the United States, each State shall have an equal vote.[57]

[52] Madison Papers, op. cit., p. 1104.
[53] Ibid., p. 1105.
[54] Ibid., p. 1106.
[55] Ibid., p. 1107.
[56] Ibid., p. 1108.
[57] Ibid., p. 1109.

Mr. Randolph said that the vote involving an equality of suffrage in the second branch had embarrassed the business extremely. All the powers given in the report from the Committee of the Whole were founded on the supposition that a proportional representation was to prevail in both branches of the Legislature. It had been his purpose to offer some propositions that might have united a great majority of the votes and provide against the danger suspected by the smaller States by enumerating the cases in which it might lie, and allowing an equality of votes in such cases. But finding from the vote which had been taken that they had persisted in demanding an equal vote in all cases, that they had succeeded in obtaining it, and that New York if present, would probably be on the same side; he could not but think they were unprepared to discuss the subject further. It would probably be in vain to come to any final decision with a bare majority on either side. For these reasons he wished the Convention to adjourn, that the large States might consider the steps proper to be taken in the present solemn crisis of the business, and that the small States might deliberate on the means of conciliation.

Mr. Patterson thought also that it was high time for the Convention to adjourn, that the rule of secrecy ought to be rescinded, and that their constituents ought to be consulted.[58] No conciliation could be admissible on the part of the smaller States on any other ground than that of an equality in the second branch. Mr. Randolph in response to a question said he had had in view an adjournment for a day, in order that some conciliatory experiment might be devised; and that, in case the smaller States should continue to hold back, the larger might take such measures—he would not say what—as might be necessary. On the question to adjourn for a day to give an opportunity to the larger States to deliberate on conciliatory expedients, the vote stood: [59]

Yeas: New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, 5.

Noes: Massachusetts, Connecticut, Delaware, South Carolina, Georgia, 5.

So it was lost.

Mr. Rutledge could see no need of an adjournment, because there was no chance of a compromise. The little States were fixed. They had repeatedly and solemnly declared themselves to be so. All that the large States had to do was to decide whether or not they would yield. For his part, although they could not do what was thought best in itself they ought to do something.

Mr. Randolph and Mr. King renewed the motion to adjourn for a day, and on this motion the vote stood: [60]

Yeas: Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 7.

Noes: Connecticut, Delaware, 2.

Divided: Georgia.

On the following morning before the hour of the Convention a number of the members from the larger States met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal representation in the second branch, and the apparent inflexibility of the smaller States on that point. Several

[58] Madison Papers, op. cit., p. 1110.
[59] Ibid., p. 1111.
[60] Ibid., p. 1112.

members from the smaller States also attended. Opinions of members who disliked the equality of votes differed much on the importance of the issue; and also as to the policy of risking the failure of any general act of the Convention by inflexibly opposing it. Several would have concurred in a firm opposition to the smaller States if eventually necessary. Others seemed inclined to yield to the smaller States and to concur in such an act, however imperfect and exceptionable, as might be agreed on by the Convention as a body though decided by a bare majority of the States and by a minority of the people of the United States.[61]

On July 17 Mr. Gouverneur Morris moved to reconsider the whole resolution agreed to on the 16th concerning the constitution of the two branches of the Legislature. His motion was not seconded.[62]

On July 18 the Convention had before it the consideration of the judiciary, and particularly the clause of the eleventh resolution:

> The judges of which to be appointed by the second branch of the National Legislature.[63]

Mr. Gorham preferred an appointment by the second branch to an appointment by the whole Legislature; but he thought even that branch too numerous and too little personally responsible to ensure a good choice.[63] He suggested that the judges be appointed by the Executive with the advice and consent of the second branch in the mode prescribed by the Constitution of Massachusetts.

Mr. Luther Martin was strenuous for an appointment by the second branch. Being taken from all the States it would be best informed of characters, and most capable of making a fit choice.[64]

Mr. Madison suggested that the judges might be appointed by the Executive with the concurrence of at least one-third of the second branch.[65] This would unite the advantage of responsibility in the Executive with the security afforded in the second branch against any incautious or corrupt nomination by the Executive.

Mr. Sherman was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive and would of course have on the whole more wisdom. They would bring into their deliberations a more diffuse knowledge of characters. It would be less easy for candidates to intrigue with them than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the Executive.

Mr. Randolph said that at the time when the appointment of the judges had been vested in the second branch an equality of votes had not been given to it. Yet he had rather leave the appointment there than give it to the Executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the votes of the members to be entered upon the Journal.[66]

On the question for referring the appointment of the judges to the Executive instead of to the second branch, the vote stood:[67]

Yeas: Massachusetts, Pennsylvania, 2.

Noes: Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, 6.

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[61] Madison Papers, op. cit., p. 1113.
[62] Ibid., p. 1114.
[63] Ibid., p. 1130.
[64] Ibid., p. 1131.
[65] Ibid., p. 1132.
[66] Ibid., p. 1133.
[67] Ibid., p. 1134.

Absent: Georgia, 1.

Mr. Gorham moved "that the judges be nominated and appointed by the Executive by and with the advice and consent of the second branch * * *." Mr. Gouverneur Morris seconded and supported the motion. On the question the vote stood:[68]

Yeas: Massachusetts, Pennsylvania, Maryland, Virginia, 4.

Noes: Connecticut, Delaware, North Carolina, South Carolina, 4.

Absent: Georgia, 1.

Mr. Madison moved "that the judges should be nominated by the Executive, and such nomination should become an appointment if not disagreed to within ——— days by two-thirds of the second branch." Mr. Gouverneur Morris seconded the motion.[69]

On July 21 Mr. Madison's motion of the 18th being resumed, Mr. Madison stated as his reasons among other things that as the second branch had been very differently constituted when the appointment of the judges had been originally referred to it and was now to be composed of equal votes from all the States, the principle of compromise which had prevailed in other instances required in this that there should be a concurrence of two authorities, in one of which the people, in the other the States, should be represented. If the second branch alone were to have this power the judges might be appointed by a minority of the people although by a majority of the States, which could not be justified on any principle, as their proceedings were to relate to the people rather than to the States, and, as it would moreover throw the appointments entirely into the hands of the Northern States, a perpetual ground of jealousy and discord would be furnished to the Southern States.

Mr. Pinckney was for placing the appointment in the second branch exclusively. The Executive would possess neither the requisite knowledge of character nor the confidence of the people for so high a trust.[70]

Mr. Ellsworth preferred a negative in the Executive on a nomination by the second branch, the negative to be overruled by a concurrence of two-thirds of the second branch, to the mode proposed by the motion, but preferred an absolute appointment by the second branch to either.

Mr. Gouverneur Morris supported the motion. The States in their corporate capacity would frequently have an interest staked on the determination of the judges. As in the Senate the States are to vote, the judges ought not to be appointed by the Senate.[70]

On the question "that the Executive should nominate, and such nominations should become appointments unless disagreed to by the Senate, the vote stood: [71]

Yeas: Massachusetts, Pennsylvania, Virginia, 3.

Noes: Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, 6.

On the question that the judges be appointed by the second branch: [72]

Yeas: Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, 6.

Noes: Massachusetts, Pennsylvania, Virginia, 3.

[68] Madison Papers, op. cit., p. 1135.
[69] Ibid., p. 1172.
[70] Ibid., p. 1173.
[71] Ibid., p. 1175.
[72] Ibid., p. 1185.

So it passed.

On July 23 Mr. Gouverneur Morris and Mr. King moved that "the representation in the second branch consist of —— members from each State, who shall vote per capita."

Mr. Gouverneur Morris moved to fill the blank with "three." He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State and a majority be made a quorum the power would be lodged in fourteen members, which was too small a number for such a trust.

Mr. Gorham preferred two to three members. A small number was most convenient for deciding on peace, and war, etc., which he expected would be vested in the second branch. The number of States would also increase.[72]

Colonel Mason thought "three" from each State, including new States, would make the second branch too numerous. Besides other objections the additional expense ought always to form one where it was not absolutely necessary.

Mr. Williamson said that if the number was too great the distant States would not be on an equal footing with the nearer States. The latter could more easily send and support their ablest citizens. He approved of the voting per capita.

On the question to fill in the blank with "three":

Yeas: Pennsylvania, 1.

Noes: New Hampshire, Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8.

On the question to fill it with "two" it was agreed to unanimously.

Mr. Luther Martin was opposed to voting per capita as departing from the idea of the States being represented in the second branch.

On the question on the whole motion: "The second branch to consist of two members from each State, and to vote per capita":[73]

Yeas: New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9.

Noes: Maryland, 1.

Mr. Gerry moved that the proceedings of the Convention for the establishment of a National Government (except the part relating to the Executive) be referred to a committee to prepare and report a constitution conformable thereto. The appointment of this committee of five members was agreed to unanimously.[74]

On July 24 the Convention appointed a committee of five to report a constitution conformable to the resolutions passed by the Convention. The committee consisted of Messrs. Rutledge, Randolph, Gorham, Ellsworth, and Wilson.[75]

At the conclusion of the session of July 26 the Convention unanimously adjourned till August 6 in order that the Committee of Detail might have time to prepare and report the Constitution. The resolutions submitted to the committee, so far as they are pertinent to the issue herein presented are as follows:[75a]

2. *Resolved*, That the Legislature consist of two branches.

* * * * * * *

4. *Resolved*, That the members of the second branch of the Legislature of the United States ought to be chosen by the individual Legislatures; to be of the age of

[72] Madison Papers, op. cit., p. 1185.
[73] Ibid., p. 1186.
[74] Ibid., p. 1187.
[75] Ibid., p. 1197.
[75a] Ibid, pp.1220-1225, 1226-1237.

thirty years at least; to hold their offices for six years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

* * * * * * *

10. *Resolved*, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

11. *Resolved*, That in the second branch of the Legislature of the United States each State shall have an equal vote.

* * * * * * *

22. *Resolved*, That the representation in the second branch of the Legislature of the United States shall consist of two members from each State, who shall vote *per capita*.

On August 6 Mr. Rutledge presented the report of the Committee of Detail, a printed copy of which was furnished to each member. The sections pertinent to the present discussion are as follows:[75a]

Article III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other * * *.

Article IV

* * * * * * *

Sec. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

* * * * * * *

Article V

Sec. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall choose two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sec. 2. The Senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sec. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sec. 4. The Senate shall choose its own President and other officers.

Article VI

Sec. 1. The times, and places, and manner of holding the elections of the members of each House, shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sec. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

[75a] Madison Papers, op. cit., pp. 1220–1225, 1226–1237.

SEC. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

SEC. 4. Each House shall be the judge of the elections, returns, and qualifications of its own members.

SEC. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any court or place out of the Legislature; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

SEC. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

SEC. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each House, on any question, shall, at the desire of one-fifth part of the members present, be entered on the Journal.

SEC. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— Article.

SEC. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

SEC. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State in which they shall be chosen.

* * * * * * *

SEC. 12. Each House shall possess the right of originating bills, except in the cases before mentioned.

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ARTICLE IX

SEC. 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and Judges of the Supreme Court.

SEC. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers:— Whenever the Legislature, or the Executive authority, or lawful agent of any State, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the Legislature, or the Executive authority, of the other State in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number, not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward."

SEC. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been

decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

ARTICLE X

* * * * * * *

* * * In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

On August 7, 1787, the report of the Committee of Detail was taken up. The preamble and Articles I and II were agreed to.

Article III being considered, Colonel Mason doubted the propriety of giving each branch a negative on the other "in all cases." There were some cases in which it was, he supposed, not intended to be given, as in the case of balloting for appointments.

Mr. Gouverneur Morris moved to insert "legislative acts", instead of "all cases." Mr. Williamson seconded him.

Mr. Sherman thought it would restrain the operation of the clause too much. It would particularly exclude a mutual negative in the case of ballots, which he hoped would take place. Mr. Gorham contended that elections ought to be made by joint ballot. If separate ballots should be made for the President, and the two branches should be each attached to a favorite, great delay, contention and confusion might ensue. The only objection against a joint ballot was that it might deprive the Senate of their due weight. Mr. Wilson was for a joint ballot in several cases at least, particularly in the choice of a President.[76]

Colonel Mason thought the amendment of Mr. Morris extended too far. Treaties are in a subsequent part declared to be laws, would be subjected to a negative, although it was proposed to make them by the Senate alone. He proposed that the mutual negative should be restrained to "cases requiring the distinct assent" of the two Houses. Mr. Gouverneur Morris thought this but a repetition of the same thing, the mutual negative and distinct assent being equivalent expressions. Treaties he thought were not laws.[77]

Mr. Madison moved to strike out the words "each of which shall in all cases have a negative on the other", the idea in his opinion being sufficiently expressed in the preceding member of the Article, vesting "the legislative power" in "distinct bodies", especially as the respective powers and mode of exercising them were fully delineated in a subsequent Article.

On the question to insert "legislative acts" it passed in the negative, the votes being equally divided:

Yeas: New Hampshire, Massachusetts, Connecticut, Pennsylvania, North Carolina, 5.

Noes: Delaware, Maryland, Virginia, South Carolina, Georgia, 5.

On the question to agree to Mr. Madison's motion to strike out * * * the vote was: [78]

Yeas: New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 7.

Noes: Connecticut, Maryland, North Carolina, 3.

[76] Madison Papers, op. cit., p. 1243.
[77] Ibid., p. 1244.
[78] Ibid., p. 1245.

Mr. Reed moved to insert after the word "Senate" the words, "subject to the negative to be hereafter provided." His object was to give an absolute negative to the Executive. He considered this as so essential to the Constitution, to the preservation of liberty, and to the public welfare, that his duty compelled him to make the motion.[79]

On the question the vote stood: [80]

Yeas: Delaware, 1.

Noes: New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

Article III with the foregoing alterations was agreed to *nem. con.*, as follows:

> The Legislative power shall be vested in a Congress to consist of two separate and distinct bodies of men, a House of Representatives and a Senate. The Legislature shall meet once in every year; and such meeting shall be on the first Monday in December unless a different day shall be appointed by law.[81]

Mr. Pinckney moved to strike out Article IV, section 5, as giving no peculiar advantage to the House of Representatives and as clogging the Government. If the Senate could be trusted with the many great powers proposed it could surely be trusted with that of originating money bills. Mr. Gorham was against allowing the Senate to *originate*, but was for allowing it only to *amend*. Mr. Gouverneur Morris thought it was particularly proper that the Senate should have the right of originating money bills. The Senate would sit constantly, would consist of a small number and would be able to prepare such bills with due correctness; and so as to prevent delay of business in the other House.[81]

Colonel Mason was unwilling to travel over this ground again. To strike out the section was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. Joined with the smallness of the number it was an argument against adding this to the other great powers vested in that body. His idea of an aristocracy was that it was a government of the few over the many. An aristocratic body, like the screw in mechanics, working its way by slow degrees and holding fast whatever it gains should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands.

Mr. Mercer considered the exclusive power of originating money bills so great an advantage that it rendered the equality of votes in the Senate ideal and of no consequence. Mr. Butler was for adhering to the principle which had been settled. Mr. Wilson was opposed to it on its merits without regard to the compromise. Mr. Ellsworth did not think the clause of any consequence; but as it was thought of consequence by some members from the larger States he was willing it should stand. Mr. Madison was for striking it out, considering it as of no advantage to the large States, as fettering the Government, and as a source of injurious altercations between the two Houses.[82]

On the question to strike out Article IV, section 5:[83]

Yeas: New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 7.

Noes: New Hampshire, Massachusetts, Connecticut, North Carolina, 4.

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[79] Madison Papers, op. cit., p. 1248.
[80] Ibid., p. 1249.
[81] Ibid., p. 1266.
[82] Ibid., p. 1267.
[83] Ibid., pp. 1267-1268.

On August 9 Mr. Randolph expressed his dissatisfaction at the disagreement to section 5 concerning money bills as endangering the success of the plan and extremely objectionable in itself. He gave notice that he would move for reconsideration. Mr. Williamson said he had formed a like intention.

When Article V, section 1 was taken up Mr. Wilson objected to vacancies in the Senate being supplied by the executives of the States. It was unnecessary, as the legislatures would meet so frequently. It removed the appointment too far from the people, the Executive in most of the States being elected by the Legislatures. As he had always thought the appointment of the Executive by the Legislative department wrong so it was still more so that the Executive should elect into the Legislative Department.[84] Mr. Randolph thought it necessary in order to prevent inconvenient chasms in the Senate. In some States the Legislatures meet but once a year. As the Senate would have more power and consist of a smaller number than the House, vacancies there would be of more consequence. He thought the Executive might for so short a time be trusted with the appointment. Mr. Ellsworth said it was only said that the Executive might supply vacancies. When the Legislative meeting happened to be near, the power would not be erected. As there would be but two members from a State, vacancies might be of great moment. Mr. Williamson said that Senators might resign or not accept, and that this provision was therefore absolutely necessary.

On the question to strike out "vacancies shall be supplied by the Executives" the vote was:

Yeas: Pennsylvania, 1.

Noes: New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 8.

Divided: Maryland.

Mr. Williamson moved to insert after "vacancies shall be supplied by the Executives" the words "unless other provisions shall be made by the Legislature" (of the State).

Mr. Ellsworth said he was willing to trust the Legislature or the Executive of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

On Mr. Williamson's motion the vote stood:[85]

Yeas: Maryland, North Carolina, South Carolina, Georgia, 4.

Noes: New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, 6.

In order to prevent doubts whether resignations could be made by Senators or whether they could refuse to accept, Mr. Madison moved to strike out the words after "vacancies" and insert the words "happening by refusals to accept, resignations, or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancies shall happen, or by the Executive thereof until the next meeting of the Legislature." Mr. Gouverneur Morris thought this absolutely necessary; otherwise as members chosen to the Senate are disqualified from being appointed to any office by section 9 of this Article, it would be in the power of a Legislature, by appointing a man a Senator against his consent, to deprive the United States of his services. Mr. Madison's motion was agreed to *nem. con.*

[84] Madison Papers, op. cit., p. 1268.
[85] Ibid., p. 1269.

Mr. Randolph called for a division of the section so as to leave a distinct question on the last words, "each member shall have one vote." He wished this last sentence to be postponed until the reconsideration should have taken place on Article IV, section 5, concerning money bills. If that section should not be reinstated his plan would be to vary the representation in the Senate.

Mr. Strong concurred in Mr. Randolph's ideas on this point.

Mr. Read did not consider the section as to money bills of any advantage to the large States and had voted for striking it out as being viewed in the same light by the larger States. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being reinstated.[86]

Mr. Wilson, Mr. Ellsworth, and Mr. Madison urged that it was of no advantage to the larger States; and that it might be a dangerous source of contention between the two Houses. All the principal powers of the National Legislature had some relation to money.

Dr. Franklin considered the two clauses, originating money bills, and the equality of votes in the Senate as essentially connected by the compromise which had been agreed to.

Colonel Mason said that this was not the time to discuss this point. When the originating of money bills should be reconsidered he thought it could be demonstrated that it was of essential importance to restrain the right to the House of Representatives, the immediate choice of the people. Mr. Williamson said that the State of North Carolina had agreed to an equality in the Senate merely in consideration that money bills be confined to the House. He was surprised to see the smaller States forsaking the condition on which they had received their equality.

On the question on the first section, down to the last sentence, the vote stood:[87]

Yeas: New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia, 7.

Noes: Massachusetts, Pennsylvania, North Carolina, 3.

Divided: South Carolina.[87]

Mr. Randolph moved that the last sentence "each member shall have one vote" be postponed.[87] It was observed that this could not be necessary; as in case the sanction as to originating money bills should not be reinstated and a revision of the Constitution should ensue it would still be proper that the members should vote per capita. A postponement of the preceding sentence allowing to each State two members would have been more proper. Mr. Mason did not mean to propose a change of this mode of voting per capita in any event. But as other methods might be proposed he saw no impropriety in postponing the sentence. Each State might have two members and yet have unequal votes. He said that unless the exclusive right of originating money bills should be restored to the House of Representatives he should—not from obstinacy, but from duty and conscience—oppose throughout the equality of representation in the Senate.

Mr. Gouverneur Morris said he supposed that such declarations were addressed to the smaller States in order to alarm them for their equality in the Senate and to induce them against their judgments to concur in the section concerning money bills. He declared that

[86] Madison Papers, op. cit., p. 1270.
[87] Ibid., p. 1271.

as he saw no prospect of amending the constitution of the Senate and considered the section relating to money bills as intrinsically bad he would adhere to the section establishing the equality at all events.

Mr. Wilson said it seemed to have been supposed that the section concerning money bills was desirable to the large States. The fact was that two of those States (Pennsylvania and Virginia) had uniformly voted against it without reference to any other part of the system.

Mr. Randolph urged that the sentence was connected with that relating to money bills and might possibly be affected by the result of the motion for reconsidering the latter; and that the postponement was therefore not improper."[88]

On the question to postpone "each member shall have one vote" the vote stood:[89]

Yeas: Virginia, North Carolina, 2.

Noes: Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 8.

Divided: New Hampshire, 1.

The words were then agreed to as part of the section; and Mr. Randolph gave notice that he would move to reconsider this whole Article V, section 1, as connected with Article IV, section 5, as to which he had already given such notice.

Article V, section 2, was then taken up.

Mr. Gouverneur Morris moved to insert after the words "immediately after" the following: "they shall be assembled in consequence of" which was agreed to *nem. con.* as was then the whole section.

Article V, section 3, was taken up.

Mr. Gouverneur Morris moved to insert 14 years instead of 4 years citizenship as a qualification for Senators, urging the danger of admitting strangers into our public councils. Mr. Pinckney seconded him. Mr. Ellsworth was opposed to the motion as discouraging meritorious aliens from emigrating to this country. Mr. Pinckney said that as the Senate was to have the power of making treaties and managing our foreign affairs there was danger and impropriety in opening its door to those who have foreign attachments.[89] Colonel Mason highly approved of the policy of the motion. Were it not that many, not natives of this country, had acquired great credit during the Revolution he would be for restraining the eligibility into the Senate, to natives.

Mr. Madison was not averse to some restrictions on this subject but could never agree to the proposed amendment. He thought any restriction, however, in the Constitution unnecessary and improper;—unnecessary because the National Legislature was to have the right of regulating naturalization, and could, by virtue thereof fix different periods of residence as conditions of enjoying different privileges of citizenship; improper, because it would give a tincture of illiberality to the Constitution; because it would put it out of the power of the National Legislature, even by special acts of naturalization, to confer the full rank of citizens on meritorious strangers; and because it would discourage the most desirable class of people from emigrating to the United States.[90]

[88] Madison Papers, op. cit., p. 1272.
[89] Ibid., p. 1273.
[90] Ibid., p. 1274.

Mr. Butler was decidedly opposed to the admission of foreigners without a long residence in the country. They brought with them not only attachments to other countries but ideas of government so distinct from ours that in every point of view they were dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments would have rendered him an improper agent in public affairs.

Dr. Franklin although not against a reasonable time was sorry to see anything like illiberality inserted in the Constitution.[91] Mr. Randolph did not know but it might be problematical whether emigrations to this country were on the whole useful or not; but he could agree to the motion to disable them for fourteen years to participate in public honors. He would go so far as seven years, but no further.

Mr. Wilson said he rose with feelings which were perhaps peculiar, mentioning the circumstances of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. On his removal into Maryland he had found himself from defect of residence under certain legal incapacities which never ceased to produce chagrin.[92] To be appointed to a place might be a matter of indifference. To be incapable of being appointed is grating and mortifying.

Mr. Gouverneur Morris ran over the privileges which emigrants enjoy among us, observing that they exceeded the privileges allowed to foreigners in any part of the world, and that as every society, from a great nation down to a club had the right of declaring the conditions on which new members should be admitted there could be no room for complaint. As to philosophical gentlemen, citizens of the world, as they called themselves, he did not wish to see them in our public councils. Men who could shake off their attachments to their own country could never love any other. These attachments are the wholesome prejudices which uphold all governments.[93]

On the question on the motion of Gouverneur Morris, to insert fourteen in place of four years, the vote stood:[94]

Yeas: New Hampshire, New Jersey, South Carolina, Georgia, 4.

Noes: Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

On the question for thirteen years, moved by Mr. Gouverneur Morris, it was negatived, the vote standing as above.

On ten years, moved by General Pinckney, the vote stood the same.

Mr. Rutledge said that seven years of citizenship having been required for the House of Representatives, surely a longer time should be requisite for the Senate.[95]

Mr. Williamson said it was more necessary to guard the Senate in this case than the other House. Bribery and cabal could be more easily practiced in the choice of the Senate, which was to be made by the legislatures composed of a few men than of the House of Representatives, chosen by the people. Mr. Randolph would agree to nine years with the expectation that it would be reduced to seven, if Mr. Wilson's motion to reconsider the vote fixing seven years for the House of Representatives should produce a reduction of that period.

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[91] Madison Papers, op. cit., p. 1275.
[92] Ibid., p. 1276.
[93] Ibid., p. 1277.
[94] Ibid., p. 1278.
[95] Ibid., p. 1278.

On the question for nine years, the vote stood:[96]

Yeas: New Hampshire, New Jersey, Delaware, Virginia, South Carolina, Georgia, 6.

Noes: Massachusetts, Connecticut, Pennsylvania, Maryland, 4.

Divided: North Carolina.

The term "resident" was struck out and "inhabitant" inserted, *nem. con.*

Article V, section 3, as amended was agreed to, *nem. con.*

Article V, section 4 was agreed to *nem. con.*

Article VI, section 1 was then taken up. Mr. Madison and Mr. Gouverneur Morris moved to strike out "each House" and to insert "the House of Representatives"; the right of the legislatures to regulate the times and places, etc., in the election of Senators being involved in the right of appointing them; which was disagreed to.

The first part was agreed to, *nem. con.*[96]

Mr. Pinckney and Mr. Rutledge moved to strike out the remaining part, to wit, "but their provisions concerning them may at any time be altered by the Legislature of the United States." The States, they contended, could and must be relied upon in such cases.

Mr. Gorham thought it would be as improper to take this power from the National Legislature as to restrain the British Parliament from regulating the circumstances of elections.

Mr. Madison said that the necessity of a general government supposes that the State legislatures would sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudice. The policy of referring the appointment of the House of Representatives to the people and not to the legislatures of the States supposes that the results will be somewhat influenced by the move. This view of the question seems to decide that the legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner of holding elections. It was impossible to foresee all the abuses that might be made of the discretionary power conveyed in these words of great latitude. Whether the electors should vote by ballot, or viva voce; should assemble at this place or that place; should be divided into districts, or all meet at one place; should all vote for all the Representatives, or all in a district vote for a number allotted to the district,—these and many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of representation in the Legislatures of particular States would produce a like inequality in their representation in the National Legislature, as it was presumable that the counties, having the power in the former case, would secure it to themselves in the latter.

What danger could there be in giving a controlling power to the National Legislature? Of whom was it to consist? First, of a Senate to be chosen by the State legislatures. Second, of Representatives elected by the same people who elect the State legislators. It seemed as improper in principle to give to the State legislatures this great authority over the election of the representatives of the people in the General Legislature, as it would be to give to the latter a like power over the election of their representatives in the State legislature.

[96] Madison Papers, op. cit., p. 1279.

Mr. King said that if this power was not given to the National Legislature their right of judging the returns of members might be frustrated.[97]

The motion of Mr. Pinckney and Mr. Rutledge did not prevail.

The word "respectively" was inserted after the word "State."

On motion of Mr. Read the word "their" was struck out, and "regulations in such cases" inserted in place of "provisions concerning them"; the clause then reading "but regulations in each of the foregoing cases may at any time be made or altered by the Legislature of the United States." This was meant to give the National Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse. Article VI, section 1 as thus amended was agreed to, *nem. con.*[98]

On Friday, August 10, Article VI, section 2, was taken up. Mr. Pinckney said that he had thought the Committee had been instructed to report the proper qualifications of property for members of the National Legislature, instead of which, he said, the Committee had referred the task to the National Legislature itself.

He said that should it be left on this footing the first legislature would meet without any particular qualifications of property. Should that Legislature consist of rich men they might fix such qualifications as might be too favorable to the rich; if of poor men, an opposite extreme might be run into. Although he was opposed to the establishment of an undue aristocratic influence in the Constitution, he nevertheless thought it essential that the members of the Legislature, the Executive, and the Judges should be possessed of competent property to make them independent and respectable. It was prudent when such great powers were to be entrusted to connect the ties of property with that of reputation in securing a faithful administration. The Legislature would have the fate of the Nation put into their hands. The President would have a great influence on it; the Judges would not only have important cases between citizen and citizen but also where foreigners were concerned. They would even be umpires between the United States and the individual States; as well as between one State and another. Were he to fix the quantum of property which should be required he would not think of less than $100,000 for the President; half of that sum for each of the Judges; and in like proportion for members of the National Legislature. He would leave the sums blank, however. His motion was that the President of the United States, the Judges, and Members of the Legislature should be required to swear that they were respectively possessed of a clear unencumbered estate to the amount of ——— in the case of the President, etc., etc.[99]

Mr. Rutledge seconded the motion, observing that the Committee had reported no qualifications because they could not agree on any among themselves, being embarrassed by the danger on one side of displeasing the people by making them high, and on the other side rendering them nugatory by making them low.

Mr. Ellsworth held that the different circumstances of different parts of the United States, and the probable difference between the present and future circumstances of the whole rendered it improper to have either *uniform* or *fixed* qualifications. Made so high as to be useful in Southern States, they would be inapplicable to the Eastern

[97] Madison Papers, op. cit., p. 1281.
[98] Ibid., p. 1282.
[99] Ibid., p. 1283.

States. Suit them to the latter and they would serve no purpose in the former. What might be accommodated to the existing state of things at the time might be very inconvenient at some future time. For these reasons he thought it better to leave the matter to the legislative discretion than to attempt a provision for it in the Constitution.

Dr. Franklin expressed his dislike of everything that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation it was not less true that the possession of property increased the desire for more property.[1]

The motion of Mr. Pinckney was objected to by a general "*no*," and the States were therefore not called.

Mr. Madison was opposed to the section as vesting an improper and dangerous power in the Legislature. Qualifications of electors and elected were fundamental articles in a republican government and ought to be fixed by the Constitution. If the Legislature could regulate those of either it could by degrees subvert the Constitution. A republic might be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected as the number authorized to elect. In all cases where the representatives of the people would have a personal interest distinct from that of their constituents there was the same reason for relying on them with full confidence as when they had a common interest. It was as improper to allow them to fix their own wages as to fix their own privileges. It was a power which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions might be devised by the stronger to keep out partisans of a weaker faction.

Mr. Ellsworth although admitting the power to be exceptionable yet could not view it as dangerous. Such a power with regard to the electors would be dangerous because it would be much more liable to abuse.[2]

Mr. Gouverneur Morris moved to strike out "with regard to property," in order to leave the Legislature entirely at large. Mr. Williamson said this would surely never be admitted. Should a majority of the Legislature be composed of any particular description of men, the future elections might be secured to their own body. Mr. Madison observed that the British Parliament possessed the power of regulating the qualifications both of the electors and the elected; and the abuse they had made of it was worthy of attention. They had made changes subservient to their own views or to the views of political or religious parties.

On the question to strike out "with regard to property", the vote stood:

Yeas: Connecticut, New Jersey, Pennsylvania, Georgia, 4.

Noes: New Hampshire, Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, 7.

Mr. Rutledge was opposed to leaving the power to the Legislature. He proposed that the qualifications should be the same as for members of the State legislatures. Mr. Wilson thought it would be best to let the whole section go out. A uniform rule would probably never be fixed by the Legislature, and this particular power would constructively exclude every other power of regulating qualifications.[3]

[1] Madison Papers, op. cit., p. 1284.
[2] Ibid., p. 1285.
[3] Ibid., p. 1286.

On the question to agree to Article VI, section 2 the vote stood:

Yeas: New Hampshire, Massachusetts, Georgia, 3.

Noes: Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 7.

On motion of Mr. Wilson to reconsider Article IV, section 2, so as to restore "three" in place of "seven" years of citizenship as a qualification for being elected to the House of Representatives, the vote stood:

Yeas: Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 6.

Noes: New Hampshire, Massachusetts, New Jersey, South Carolina, Georgia, 5.

The Monday succeeding was then assigned for the reconsideration, all the States being yea, except Massachusetts and Georgia.

Article VI, section 3 was then taken up.

Mr. Gorham contended that less than a majority in each House should constitute a quorum; otherwise great delay in business might occur, and great inconvenience from the future increase of numbers.

Mr. Mercer was also for less than a majority. So great a number would put it within the power of a few by seceding at a critical moment, to introduce convulsions and endanger the Government. He was for leaving it to the Legislature to fix the quorum, as in Great Britain, where the requisite number was small, and where no inconvenience had been experienced.[4]

Colonel Mason regarded this as a valuable and necessary part of the plan. In a country so extended, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The central states could always take care to be on the spot; and by meeting earlier than distant ones, or wearying their patience and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might arise from the secession of a small number; but he had also known good produced by an apprehension of it. If the Legislature should be able to reduce the number at all it might reduce it as low as it pleased, and the United States might be governed by a junto.

Mr. Gouverneur Morris moved to fix the quorum at 33 Members in the House of Representatives and 14 in the Senate. This was a majority of the present number and would be a bar to the Legislature. Fix the number low and they would generally attend, knowing that advantage might be taken of their absence. The secession of a small number ought not to be suffered to break a quorum. Such events in the States might have been of little consequence. In national councils they might be fatal.[5] Besides other mischief, if a few could break up a quorum, they might seize a moment when a particular part of the continent might be in need of immediate aid to control by threatening a secession, some unjust and selfish measure.

Mr. King said he had prepared a motion which instead of fixing the numbers proposed by Mr. Gouverneur Morris as quorums, made those the lowest numbers, leaving the Legislature to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

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[4] Madison Papers, op. cit., p. 1287.

[5] Ibid., p. 1288.

Mr. Elsworth was opposed. It would be a pleasing ground of confidence to the people that no law or burthen could be imposed upon them by a few men. A very great number of Representatives was not to be apprehended. The inconvenience of secessions might be guarded against by giving to each House an authority to require the attendance of absent members.[6]

Mr. Gerry[7] seemed to think some further precautions than merely fixing the quorum might be necessary. As 17 would be a majority of 33 and 8 of 14, questions might by possibility be carried in the House of Representatives by two large States, and in the Senate by the same States with the aid of two small ones. He proposed that the number for a quorum in the House of Representatives should not exceed 50, nor be less than 33; leaving the intermediate discretion to the Legislature.

On the question of Mr. King's motion that not less than 33 in the House of Representatives nor less than 14 in the Senate should constitute a quorum, which might be increased by a law on additions to the members in either House, the vote stood:[8]

Yeas: Massachusetts, Delaware, 2.

Noes: New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

Mr. Randolph and Mr. Madison moved to add to the end of Article VI, section 3, "and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide." This was agreed to by all except Pennsylvania, which was divided.

Article VI, section 3, was agreed to as amended, *nem. con.*

Sections 4 and 5 of Article VI were then agreed to, *nem. con.*[9]

Mr. Madison observed that the right of expulsion (Art. VI, sec. 6) was too important to be exercised by a bare majority of a quorum; and in emergencies might be dangerously abused. He moved that "with the concurrence of two-thirds" might be inserted between "may" and "expel."

Mr. Gouverneur Morris thought the power might be entrusted safely to a majority. To require more might produce abuses on the side of the minority. A few men from factions motives might keep in a member who ought to be expelled. Mr. Carroll thought that the concurrence of at least two-thirds should be required.

On the question to require two-thirds in cases of expelling a member, 10 States voted affirmatively, Pennsylvania divided.

Article VI, section 6 as thus amended was then agreed to, *nem. con.*

Article VI, section 7 was then taken up.

Mr. Gouverneur Morris urged that if the yeas and nays were proper at all any individual ought to be authorized to call for them, and moved an amendment to that effect. The small States might otherwise be at a disadvantage and find it difficult to get a concurrence of one-fifth. Mr. Sherman had rather strike out the yeas and nays altogether. They had never done any good. They had done much mischief. They were not proper, and the reasons governing the votes never appear along with them.[9]

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[6] Madison Papers, op. cit., p. 1289.
[7] Ibid., pp. 1289–1290.
[8] Ibid., p. 1290.
[9] Ibid., p. 1291.

Mr. Gorham was opposed to the motion for allowing a single member to call the yeas and nays, and recited the abuses of it in Massachusetts; first, in stuffing the journals with them on frivolous occasions; and secondly, misleading the people, who never knew the reasons determining the votes.

The motion was disagreed to, *nem. con.*

Mr. Carroll and Mr. Randolph moved to strike out "each House" and to insert the words, "the House of Representatives" in section 7, Article VI; and to add to the section the words, "and any member of the Senate shall be at liberty to enter his dissent." Mr. Gouverneur Morris and Mr. Wilson observed that if the minority were to have a right to enter their votes and reasons, the other side would have a right to complain if it were not extended to them; and to allow it to both would fill the journals, like the records of a court.

On the question on Mr. Carroll's motion to allow a member to enter his dissent, the vote stood: [10]

Yeas: Maryland, Virginia, South Carolina, 3.

Noes: New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, 8.

Mr. Gerry moved to strike out the words "when it shall be acting in its legislative capacity" in order to extend the provisions to the Senate when exercising its peculiar authorities, and to insert "except such parts thereof as in their judgment require secrecy", after the words "publish them." On this question for striking out the words "when acting in its legislative capacity" the vote stood: [11]

Yeas: Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7.

Noes: Connecticut, New Jersey, Pennsylvania, 3.

Divided: New Hampshire.

On August 11, Mr. Madison and Mr. Rutledge moved "that each House shall keep a journal of its proceedings, and shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its legislative capacity, as may be judged by that House to require secrecy." Mr. Mercer said that this implied that other powers than legislative would be given to the Senate, which he hoped would not be given. The motion was disagreed to by all the States except Virginia.

Mr. Gerry and Mr. Sherman moved to insert after the words "publish them", the following, "except such as relate to treaties and military operations." Their object was to give each House a discretion in such cases.[11] On the question the vote stood:

Yeas: Massachusetts, Connecticut, 2.

Noes: New Jersey, New Hampshire, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8.

Mr. Ellsworth said that as the clause was objectionable in so many ways it might as well be struck out altogether. The Legislature would not fail to publish their proceedings from time to time. The people would call for it if it should be improperly omitted.

Mr. Wilson thought the expunging of the clause would be very improper. The people had a right to know what their agents were doing or had done, and it should not be in the option of the Legislature to cancel their proceedings. Besides, since this was a clause in the

[10] Madison Papers, op. cit., p. 1292.
[11] Ibid., p. 1293.

existing confederation, not to retain it would furnish the adversaries of the reform with a pretext by which weak and suspicious minds might be easily misled.

Mr. Mason thought it would give just alarm to the people to make a conclave of their Legislature. Mr. Sherman thought the Legislature might be trusted in this case, if in any.

On the question on the first part of the section, down to "publish them" inclusive, it was agreed to, *nem. con.*

On the question on the words to follow, to wit, "except such parts thereof as may in their judgment require secrecy", the vote stood:

Yeas: Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, 6.

Noes: Pennsylvania, Delaware, Maryland, South Carolina, 4.

Divided: New Hampshire.

The remaining part, as to yeas and nays, was agreed to *nem. con.*[12]

Article VI, section 8, authorizing the two Houses to adjourn to a new place, was then taken up. After some discussion motions to change the section resulted in a motion which assumed the following form:

> the Legislature shall at their first assembling determine on a place at which their future sessions shall be held; neither House shall afterwards during the session of the House of Representatives, without the consent of the other, adjourn for more than three days; nor shall they adjourn to any other place than such as shall have been fixed by law.[13]

After some expressions denoting an apprehension that the seat of government might be continued at an improper place if a law should be made necessary to a removal, and after the motion above stated, with another recommitting the section, had been negatived, the section was left in the shape reported, as to this point.

The words "during the session of the Legislature" were prefixed to the eighth section; and the last sentence, "but this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— Article", was struck out. The eighth section as amended was then agreed to.

Mr. Randolph then moved to reconsider Article IV, section 5, concerning money bills, which had been struck out. He had not wished for the privilege while a proportional representation in the Senate was in contemplation, but since an equality had been fixed in that House, the large States would at least require this compensation. It would make the plan more acceptable to the people because they would consider the Senate as the more aristocratic body and would expect that the usual guards against its influence be provided, according to the example of Great Britain. The privilege would give some advantage to the House of Representatives if it extended to the originating only, but still more if it restrained the Senate from amending. He called on the smaller States to concur in the measure as the condition alone by which the compromise had entitled them to an equality in the Senate.[14] He would propose instead of the original section a clause specifying that the bills in question should be for the purpose of revenue, in order to repel the objection against the extent of the words "raising money", which might happen incidentally; and that the Senate should not so amend or alter as to increase or diminish the sum; in order to obviate the inconveniences urged against a

[12] Madison Papers, op. cit., p. 1294.
[13] Ibid., p. 1296.
[14] Ibid., p. 1297.

restriction of the Senate to a simple affirmative or negative. Mr. Williamson seconded the motion.

Mr. Pinckney considered the rule of representation in the first branch was the true condition of that in the second branch.

On the question to reconsider, the vote was:[15]

Yeas: New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, Georgia, 9.

Noes: Maryland, 1.

Divided: South Carolina.

On Monday, August 13, Mr. Wilson moved that in Article V, section 3, nine years be reduced to seven. This being disagreed to, Article V, section 3 was approved by the following vote:[16]

Yeas: New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8.

Noes: Connecticut, Pennsylvania, Maryland, 3.

Article IV, section 5, being reconsidered, Mr. Randolph moved that the clause be altered so as to read:

> Bills for raising money for the *purpose of revenue*, or for appropriating the same, shall originate in the House of Representatives, and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation.

Mr. Randolph would not repeat his reasons, but barely remind the members from the smaller States of the compromise by which the larger States were entitled to this privilege.

Colonel Mason said the amendment removed all the objections urged against the section as it stood at first. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. First, the Senate did not represent the *people*, but the *States*, in their political character. It was improper therefore that it should tax the people. The reason was the same against their doing it as it had been against Congress doing it. Again, the Senate was not chosen frequently, and obliged to return frequently among the people. They were to be chosen by the States for six years, would probably settle themselves at the seat of government—would pursue schemes for their own aggrandizement—would be able by wearing out the House of Representatives, and taking advantage of their impatience at the close of a long session, to extort measures for that purpose. If they should be paid, as he expected would be yet determined and wished to be so, out of the National Treasury, they would, particularly, extort an increase of their wages. A bare negative was a very different thing from that of originating bills. The practice in England was in point. The House of Lords did not represent nor tax the people, because not elected by the people. If the Senate could originate, they would, in the recess of legislative sessions, hatch their mischievous projects, for their own purposes, and have their money bills cut and dried for the meeting of the House of Representatives. He compared the case to Poyning's law, and signified that the House of Representatives might be rendered by degrees, like the parliament of Paris, the mere depositary of the decrees of the Senate.[17] He did not mean to oppose the permanency of the Senate. He had no repugnancy to an increase of it, nor to allowing it a negative, though the Senate was not by its

[15] Madison Papers, op. cit., p. 1298.
[16] Ibid., p. 1305.
[17] Ibid., p. 1307.

present constitution entitled to it. But in all events, he would contend that the purse strings should be in the hands of the Representatives of the people.

Mr. Wilson was directly opposed to the equality of votes granted to the Senate by its present constitution. At the same time he wished not to multiply the vices of the system. He regarded as an insuperable objection against the proposed restriction of money bills to the House of Representatives that it would be a source of perpetual contentions where there was no mediator to decide them. The House of Representatives would insert other things in money bills, and by making them conditions of each other destroy the deliberate liberty of the Senate. If there was anything like Poyning's law in the present case, it was in the attempt to vest the exclusive right of originating in the House of Representatives, and so far he was against it. He would be equally so if the right were to be exclusively vested in the Senate. It was to be observed that the purse was to have two strings, one of which was in the hands of the House of Representatives, the other in those of the Senate. Both Houses must concur in untying, and of what importance could it be, which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose, and would be in the habits of business. War, commerce, and revenue were the great objects of the General Government. All of them were connected with money. The restriction in favor of the House of Representatives would exclude the Senate from originating any important bills whatever.

Mr. Gerry said that taxation and representation were strongly associated in the minds of the people; and that they would not agree that any but their immediate Representatives should meddle with their purses. The acceptance of the plan would inevitably fail if the Senate was not restrained from originating money bills.[18]

Mr. Gouverneur Morris observed that all the arguments supposed the right to originate and to tax to be exclusively vested in the Senate. The effects commented on might be produced by a negative only in the Senate. They could tire out the other House, and extort their concurrence in favorite measures as well by withholding their negative as by adhering to a bill introduced by themselves.

Mr. Madison thought that if the substitute offered by Mr. Randolph for the original section were to be adopted it would be proper to allow the Senate at least so to amend as to diminish the sums to be raised. Why should they be restrained from checking the extravagance of the other House? The proposed substitute laid a foundation for new difficulties and disputes between the two Houses. The words "amend or alter" formed an equal source of doubt and altercation. When an obnoxious paragraph should be sent down from the Senate to the House of Representatives it would be called an origination under the name of an amendment. The Senate might actually couch extraneous matter under that name. As to the permanence of the Senate, it was not more permanent then than in the form it bore in the original propositions of Mr. Randolph, and at the time when no objection whatever was hinted against its originating money bills. Or if a proportional vote in the Senate should be reinstated the permanence of the Senate would remain the same. If the right to originate was

[18] Madison Papers, op. cit., p. 1309.

exclusively in the House of Representatives, either the Senate must yield, against its judgment, to that House—in which case the utility of the check would be lost—or the Senate would be inflexible, and the House of Representatives must adapt its money bill to the views of the Senate; in which case the exclusive right would be of no avail. Five States—Massachusetts, Pennsylvania, Virginia, North Carolina, and South Carolina—had opposed the equality of votes in the Senate. As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other House had been tendered. Of the five States a majority—Pennsylvania, Virginia, and South Carolina had uniformly voted against the proposed compensation. Massachusetts had been divided. North Carolina alone had set a value on the compensation and voted on that principle. What obligation could the small States be under to concur in reinstating the section? [19]

Mr. Dickinson asked if experience had not verified the utility of restraining money bills to the immediate Representatives of the people. If both Houses should originate each would have a different bill to which it would be attached, and for which it would contend. All the prejudices of the people would be offended by refusing this exclusive privilege to the House of Representatives. Eight States had inserted in their Constitutions the exclusive right of originating money bills in favor of the popular branch of the Legislature. Most of them allowed the other branch to amend. That he thought would be proper for them (the Convention) to do.[20]

Mr. Randolph asked when the people beheld in the Senate the countenance of an aristocracy would not their alarms be sufficiently raised without taking from their immediate Representatives a right which has been so long appropriated to them. The Executive would have more influence over the Senate than over the House of Representatives. Allow the Senate to originate in this case, and that influence would be sure to mix itself in their deliberations and plans. The declaration of war ought not to be in the Senate but rather in the other House. In the other House ought to be placed the origination of the means of war. As to commercial regulations which might involve revenue, the difficulty might be avoided by restraining the definition to bills for the *mere* or *sole* purpose of raising revenue. The Senate would be more likely to be corrupt than the House of Representatives, and should therefore have less to do with money matters.[21]

Mr. Rutledge would prefer giving the exclusive right to the Senate if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure, would digest the bills much better. He referred to the practice in the Senate in South Carolina.[22]

On the question of exclusively originating money bills in the House of Representatives the vote stood:[23]

Yeas: New Hampshire, Massachusetts, Virginia, North Carolina, 4.

Noes: Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 7.

On the question on originating by the House of Representatives and amending by the Senate (Art. IV, sec. 5):[23]

[19] Madison Papers, op. cit., pp. 1310-1312.
[20] Ibid., p. 1313.
[21] Ibid., p. 1314.
[22] Ibid., p. 1315.
[23] Ibid., p. 1316.

Yeas: New Hampshire, Massachusetts, Virginia, North Carolina, 4.

Noes: Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 7.

On August 14 the Convention considered Article VI, section 9, as follows:

> The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States; during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.*

Mr. Pinckney argued that making the members ineligible to office was degrading to them and that it was inconvenient, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a school of public ministers, a nursery of statesmen. It was impolitic, because the Legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section in order to take up the following proposition, to wit:

> the members of each House shall be incapable of holding any office under the United States for which they, or any others for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively.

General Mifflin seconded the motion.[24]

Mr. Gerry said that if the Senate were to appoint ambassadors, as seemed to be intended, they would multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If great powers should be given to the Senate, we should be governed in reality by a junto, as had been apprehended. He remarked that it would be very differently constituted from Congress. There would be but two deputies from each State; in Congress there might be seven, and were generally five. They were chosen for six years; those of Congress annually. They were not subject to recall; those of Congress were. In Congress nine States were necessary for all great purposes; here eight persons would suffice. He moved to render the members of the House of Representatives, as well as of the Senate, ineligible, not only during, but for one year after the expiration of their terms.[25]

Mr. Williamson said, "We have now got a House of Lords which is to originate money bills. We are to have a whole legislature, at liberty to cut out offices for one another." Bad as the Constitution had been made by expunging the restriction on the Senate concerning money bills, he did not wish to make it worse by expunging the present section.[26]

The motion to postpone in order to take up Mr. Pinckney's motion was lost.

Mr. Gouverneur Morris moved to insert after "office", "except offices in the Army or Navy; but in that case, their offices shall be vacated."[27]

Mr. Butler and Mr. Pinckney urged a general postponement of Article VI, section 9, till it should be seen what powers would be vested in the Senate, and a general postponement was agreed to.

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* The Records of the Federal Convention of 1787, edited by Max Farrand, vol. II, p. 283, footnote 1.

[24] Madison Papers, op. cit., p. 1317.

[25] Ibid., p. 1320.

[26] Ibid., p. 1322.

[27] Ibid., p. 1325.

Article VI, section 10, "that members be paid by their respective States", was then taken up. Mr. Butler contended for payment by the States; particularly in the case of the Senate, who would be so long out of their respective States that they would lose sight of their constituents unless dependent on them for their support.[28]

Mr. Madison said that if the House of Representatives was to be chosen biennially and the Senate to be constantly dependent on the legislatures, which were chosen annually, he could not see any chance for that stability in the General Government, the want of which was a principal evil in the State governments. His fear was that the organization of the Government, supposing the Senate to be really independent for six years, would not effect our purpose. The Senate was formed on the model of that of Maryland.

Mr. Gerry said that the State Legislatures might turn out the Senators by reducing their salaries.[29] Mr. L. Martin said that as the Senate was to represent the States, the members of it ought to be paid by the States. Mr. Carroll said the Senate was to represent and manage the affairs of the whole and not to be the advocates of State interests. They ought then not to be dependent on, nor paid by the States.

On the question for paying the members of the Legislature out of the National Treasury the vote stood:[30]

Yeas: New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 9.

Noes: Massachusetts, South Carolina, 2.

Later, Mr. Dickinson proposed that the wages of the members of both Houses should be required to be the same. Mr. Gorham thought this unreasonable as the Senate would be detained longer from home, would be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher.

Mr. Dickinson withdrew his motion. It was moved and agreed to amend the section (Art. VI, sec. 10) by adding, "to be ascertained by law." The section was then agreed to as amended.

On August 15, Article VI, section 12, providing that "each House shall possess the right of originating bills, except in the cases before mentioned" was taken up.[31]

Mr. Strong moved to amend the article so as to read:

> Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same, and for fixing the salaries of the officers of the Government, which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases.

Colonel Mason seconded the motion. He was extremely earnest to take this power from the Senate who, he said, could already sell the whole country by means of treaties. Mr. Gorham urged the amendment as of great importance. The Senate would first acquire the habit of preparing money bills, and then the practice would grow into an exclusive right of preparing them. Mr. Williamson said some thought this restriction on the Senate essential to liberty; others thought it of no importance. He was for an efficient and stable government; but many would not strengthen the Senate, if not restricted in the case of money bills. The friends of the Senate would

[28] Madison Papers, op. cit., p. 1326.
[29] Ibid., p. 1327.
[30] Ibid., p. 1329.
[31] Ibid., p. 1330.

therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over. Mr. Mercer contended that the Senate ought not to have the power of treaties.[32]

Colonel Mason did not say that a treaty would repeal a law; but that the Senate by means of treaties might alienate territory, etc., without legislative sanction. If Spain should possess herself of Georgia the Senate might by treaty dismember the Union. It was agreed to postpone section 12.[33]

On the clause "to make war," Mr. Pinckney opposed vesting that power in the Legislature. Its proceedings were too slow. It would meet but once a year. The House of Representatives would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States were equally represented in the Senate so as to give no advantage to the large States, the power would, notwithstanding, be safe, as the small had their all at stake in such cases as well as the large States.[34]

Mr. Butler said the objections against the Legislature lay in a great degree against the Senate. Mr. Mason was against giving the power of war to the Senate, because not so constructed as to be entitled to it.

Mr. Butler moved to give the Legislature the power of peace, as they were to have that of war. Mr. Gerry seconded him. Eight Senators might possibly exercise the power, if vested in that body; and fourteen, if all should be present, might consequently give up part of the United States. The Senate were more liable to be corrupted by an enemy, than the whole Legislature. The motion was negatived.[35]

On August 18 Mr. Ellsworth observed that a council had not yet been provided for the President. He proposed that it be composed of the President of the Senate, the Chief Justice, and the Ministers for the Departments of Foreign and Domestic Affairs, War, Finance, and Marine.[36]

On August 23 the Convention took up Article IX, section 1, of the report of the Committee of Eleven, to wit: "The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court" Mr. Gouverneur Morris argued against the appointment of officers by the Senate. He considered that body as too numerous for that purpose; as subject to cabal; and as devoid of responsibility. If judges were to be tried by the Senate, according to a late report of a committee, it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create. Mr. Wilson was of the same opinion, and for like reasons.[37] Mr. Madison observed that the Senate represented the States alone; and that for this as well as other obvious reasons, it was proper that the President should be an agent in treaties. Mr. Gouverneur Morris did not know that he should agree to refer the making of treaties to the Senate at all, but for the present would move to amend the section by adding "but no treaty shall be binding on the United States which is not ratified by law." [38]

[32] Madison Papers, op. cit., p. 1331.
[33] Ibid., p. 1332.
[34] Ibid., p. 1351.
[35] Ibid., p. 1353.
[36] Ibid., p. 1358.
[37] Ibid., p. 1409.
[38] Ibid., p. 1412.

Mr. Wilson said that in the most important treaties the King of Great Britain, being obliged to resort to Parliament for the execution of them, was under the same fetters as the amendment of Mr. Morris would impose on the Senate.[39] Mr. Gouverneur Morris' motion was lost by a vote of 8 to 1.[40]

Mr. Madison thought a distinction might be made between different sorts of treaties, allowing the President and Senate to make treaties eventual, and of alliance for limited terms, and requiring the concurrence of the whole Legislature in other treaties. The first section of Article IX was finally referred to the Committee of Five.[41] A motion to strike out the second and third sections of Article IX was carried by a vote of 8 to 2.[42]

Article X, section 1, being under consideration (the President shall be elected by ballot by the Legislature) Mr. Rutledge moved to insert "joint" before the word "ballot." Mr. Sherman objected to it, as depriving the States, represented in the Senate, of the negative intended them in that House.[43]

Mr. Gorham said it was wrong to be considering, at every turn, whom the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue if the two Houses should vote separately, each having a negative on the choice of the other.

Mr. Dayton said it might be well for those not to consider how the Senate was constituted whose interest it was to keep it out of sight. If the amendment should be agreed to, a joint ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no doubt of the two Houses separately concurring in the same person for President. The importance and necessity of the case would ensure a concurrence.

Mr. Wilson remarked also that the Senate had peculiar powers balancing the advantage given by a joint ballot in this case to the other branch of the Legislature.[44]

Mr. Langdon said this general officer ought to be elected by the joint and general voice. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch.

Mr. Wilson remarked that as the President of the Senate was to be the President of the United States, that body, in cases of vacancy, might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

Mr. Madison said if the amendment was agreed to, the rule of voting would give to the largest State, compared with the smallest, an influence as 4 to 1 only, although the population was as 10 to 1. This could not be unreasonable, as the President was to act for the people, not for the States. The President of the Senate also was to be occasionally President of the United States, and by his negative alone could make three-fourths of the other branch necessary to the passage of a law. This was another advantage enjoyed by the Senate. The motion to insert "joint" was agreed to.[45] Mr. Read moved, that, "in case the numbers for the two highest in votes should be equal,

[39] Madison Papers, op. cit., p. 1413.
[40] Ibid., p. 1414.
[41] Ibid., p. 1415.
[42] Ibid., p. 1416.
[43] Ibid., p. 1417.
[44] Ibid., p. 1418.
[45] Ibid., p. 1419.

then the President of the Senate shall have an additional casting vote." The motion was disagreed to by a general negative.[46]

On August 27 the Convention resumed consideration of Article X, section 2. Mr. Gouverneur Morris objected to the President of the Senate being provisional successor to the President. Mr. Madison added as a ground of objection that the Senate might retard the appointment of a President in order to carry points whilst the revisionary power was in the President of their own body.[47]

On September 1, the Committee of Eleven made a partial report on the postponed parts of the Constitution and parts not acted upon. As to Article VI, section 9, the committee recommended that in lieu thereof the following be inserted:

> The members of each House shall be ineligible to any civil office under the authority of the United States, during the time for which they shall respectively be elected; and no person holding an office under the United States shall be a member of either House during his continuance in office.[48]

On September 3 Mr. Pinckney moved to take up the following, to wit:

> The members of each House shall be incapable of holding any office under the United States for which they, or any other for their benefit, receive any salary, fees or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively.

On the question the vote was 2 to 8. The report of the committee finally was amended so as to read:

> The members of each House shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased, during the time for which they shall respectively be elected. And no person holding any office under the United States shall be a member of either House during his continuance in office.[49]

On September 4 a further partial report was made by the Committee of Eleven, which included the recommendation to substitute for section 1 of Article IX the following:

> The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present.[50]

As to Article X, section 1, (referring to the election of the President), there was provision for directing the electoral votes to the President of the Senate, and his opening of the certificates. There was also the following provision:

> * * * and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President; but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President; and in every case after the choice of the President, the person having the greatest number of votes shall be Vice-President; but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President.

And Article VI, section 3, was included as follows:

> The Vice President shall be *ex-officio* President of the Senate; except when they sit to try the impeachment of the President; in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president

[46] Madison Papers, op. cit., p. 1429.
[47] Ibid., pp. 1433-1434.
[48] Ibid., p. 1479.
[49] Ibid., p. 1485.
[50] Ibid., p. 1486.

pro tempore. The Vice President, when acting as President of the Senate, shall not have a vote unless the House be equally divided.[51]

Article VII, section 4, was as follows:

> The President, by and with the advice and consent of the Senate, shall have power to make treaties; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public ministers, Judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise herein provided for. But no treaty shall be made without the consent of two-thirds of the members present.

Provision was made to amend the latter part of section 2, Article X, to read as follows:

> He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate * * *.

Mr. Gorham disapproved of making the next highest after the President the Vice President, without referring the decision to the Senate in case the next highest should have less than a majority of votes.[52] In response to the inquiry of Mr. Randolph and Mr. Pinckney as to the reason for changing the mode of electing the Executive, Mr. Gouverneur Morris, in stating the reasons of the Committee as well as his own, said among other things, that one was the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch for the impeachment of the President, if appointed by the Legislature. A conclusive reason for making the Senate, instead of the Supreme Court the judge of impeachments was that the latter was to try the President after the trial of impeachment.

Colonel Mason said that the plan of the Committee was liable to the strong objection that nineteen times in twenty the President would be chosen by the Senate, an improper body for that purpose.

Mr. Pinckney objected, among other things, that the plan threw the whole appointment into the hands of the Senate.[53] Mr. Williamson had great doubts whether the advantage of reeligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought the Senate ought to be restrained to the two highest on the list.[54] Mr. Wilson thought it might be better to refer the eventual appointment to the Legislature than to the Senate. The eventual election by the Legislature would not open cabal anew, as it would be restrained to certain designated objects of choice; and if the election was made as soon as the votes of the electors were opened, and it was known that no one had a majority of the whole, there could be little danger of corruption. Another reason for preferring the Legislature to the Senate was that the House of Representatives would be so often changed as to be free from influence and faction, to which the permanence of the Senate might subject that branch.

Mr. Randolph wished to know why if a change was to be made, the eventual election was referred to the Senate and not to the Legislature.[55] Mr. Gouverneur Morris said the Senate was preferred because fewer could then say to the President you owe your appointment to us. He thought the President would not depend so much on the Senate for his reappointment as on his general good conduct.[56]

[51] Madison Papers, op. cit., p. 1487.
[52] Ibid., p. 1488.
[53] Ibid., p. 1490.
[54] Ibid., p. 1491.
[55] Ibid., p. 1492.
[56] Ibid., p. 1493.

On September 5 the Committee of Eleven made a further report. The third clause of the report was as follows:

Instead of section 12, Article 6, the following: "All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate * * *".[57]

Mr. Gouverneur Morris moved to postpone the third clause. It had been agreed to in the Committee on the ground of compromise. The consideration of the clause was postponed by a vote of nine to two.[58] The Convention then took up that part of the Committee's report dealing with the appointment of the Executive. Mr. Pinckney argued that the electors would not have sufficient knowledge of the fittest men and would be swayed by an attachment to the eminent men of their respective States. The dispersion of the votes would leave the appointment with the Senate, and as the President's reappointment would thus depend on the Senate, he would be the mere creature of that body. He would combine with the Senate against the House of Representatives. The change in the mode of election, moreover, was meant to get rid of the ineligibility of the President a second time, whereby he would become fixed for life under the auspices of the Senate.[59] Mr. Rutledge was opposed to the plan, as it would throw the whole power into the Senate.

Colonel Mason objected, among other things, that the plan of the Committee put the appointment, in fact, into the hands of the Senate, as it would rarely happen that a majority of the whole vote would fall on any one candidate; and as the existing President would always be one of the five highest, his reappointment would of course depend on the Senate. Secondly, if a coalition should be established between the Executive and the Senate, they would be able to subvert the Constitution. His objection would be removed by depriving the Senate of the eventual election.[60]

Mr. Williamson preferred making the highest, though not having a majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate laid a certain foundation for corruption and aristocracy.

Mr. Sherman reminded the opponents of the new mode proposed, that if the small States had the advantages on the Senate's deciding among the five highest candidates, the large States would have in fact the nomination of these candidates.[61]

Mr. Wilson moved to strike out "Senate" and insert the word "Legislature."

Mr. Madison said that if the Senate, in which the small States predominate, should have the final choice, the concerted effort of the large States would be to make the appointment in the first instance conclusive. Mr. Randolph dwelt on the tendency of an influence in the Senate over the election of the President, in addition to its other powers, to convert that body into a real and dangerous aristocracy. Mr. Dickinson was in favor of giving the eventual election to the Legislature, instead of the Senate. It was too much influence to be superadded to that body.[62] On Mr. Wilson's motion the vote was three to seven. Mr. Williamson said there were seven States which

[57] Madison Papers, op. cit., p. 1454.
[58] Ibid., p. 1496.
[59] Ibid., p. 1497.
[60] Ibid., p. 1498.
[61] Ibid., p. 1499.
[62] Ibid., p. 1500.

did not contain one-third of the people. If the Senate was to appoint, less than one-sixth of the people would have the power. Mr. King observed that the influence of the small States in the Senate was somewhat balanced by the influence of the large States in bringing forward the candidates.[63]

On September 6, Mr. Gerry proposed that, as the President was to be elected by the Senate out of the five highest candidates, if he should not at the end of his term be reelected by a majority of the electors, and no other candidate should have a majority, the eventual election should be made by the Congress. This would relieve the President from his particular dependence on the Senate for his continuance in office.[64] Mr. Williamson espoused the idea as a reasonable precaution against the undue influence of the Senate.

Mr. Sherman thought that if the Legislature was to have the eventual appointment, instead of the Senate, it ought to vote by States—in favor of the small States, as the large States would have so great an advantage in nominating the candidates. Mr. Gouverneur Morris thought favorably of Mr. Gerry's proposition. It would free the President from being tempted, in naming to offices, to conform to the will of the Senate, and thereby virtually give the appointments to office to the Senate.

Mr. Wilson had weighed carefully the report of the Committee for remodeling the constitution of the Executive; and on combining it with other parts of the plan he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They would have in fact the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others, the officers of the Judiciary Department. They were to make treaties; and they were to try all impeachments. In allowing them thus to make the Executive and Judiciary appointments, to be the court of impeachments, and to make treaties, the Legislative, Executive, and Judiciary powers were all blended in one branch of the Government. The President would not be the man of the people, as he ought to be; but the minion of the Senate. He could not even appoint a tide-waiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate would in all probability be in constant session. They would have high salaries. And with all those powers, and the President in their interest, they would depress the other branch of the Legislature, and aggrandize themselves in proportion. Add to all this that the Senate, sitting in conclave could by holding up to their respective States various and improbable candidates, contrive so to scatter their votes as to bring the appointment of the President ultimately before themselves.[65]

Mr. Gouverneur Morris compared the original plan with the modification. By the first the Senate had a voice in appointing the President out of all the citizens of the United States; by the modification they were limited to five candidates previously nominated to them, with the probability of being barred altogether by the successful ballot of the electors. Here surely was no increase of power. They were now to appoint judges, nominated to them by the President. Before, they had the appointment without any agency whatever of the

[63] Madison Papers, op. cit., p. 1501.
[64] Ibid., p. 1503.
[65] Ibid., pp. 1504–1505.

President. Here again was surely no additional power. If they were now to make treaties the power was the same as before. If they were to try impeachments, the judges must have been triable by them before. Wherein lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? If the Senate would act, as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

Mr. Williamson observed that the aristocratic complexion proceeded from the change in the mode of appointing the President, which made him dependent on the Senate.[66] Mr. Clymer said that the aristocratic part, to which he could never accede, was that in the printed plan, which gave the Senate the power of appointing to offices.

Mr. Hamilton said, among other things, that he concurred with those who thought that in the election of the President the votes would not be concentered, and that the appointment would consequently, in the present mode, devolve on the Senate. The nomination to offices would give great weight to the President. Here was a mutual connection and influence that would perpetuate the President, and aggrandize both him and the Senate. As the plan stood the Senate might take the candidate having the smallest number of votes, and make him President.[67]

On several motions, the words, "in presence of the Senate and House of Representatives" were inserted after the word "counted."

Mr. Spaight said he would prefer the electors meeting altogether, and deciding finally without any reference to the Senate.[68]

On the question on the clause referring the eventual appointment of the President to the Senate, the call ceased after seven States had voted "Aye" and one, "No".[69]

Mr. Madison moved to require two-thirds at least of the Senate to be present at the choice of a President. On the question the vote was 6 to 4, with one State absent. Mr. Williamson suggested as better than an eventual choice by the Senate, that the choice should be made by the Legislature, voting by States and not per capita. Mr. Sherman moved to strike out the word "Senate" and insert "The House of Representatives."[69] Colonel Mason liked the latter mode best, as lessening the aristocratic influence of the Senate. On Mr. Sherman's motion the vote stood 10 to 1.[70] The report of the Committee relating to the appointment of the Executive, as amended then appears generally as in the final draft. It is not repeated here.[71]

On September 7 that section of the Committee's report: "The Vice President shall be ex-officio President of the Senate" was considered. Mr. Gerry opposed. We might as well put the President himself at the head of the Legislature. The close intimacy that must exist between the President and Vice President makes it absolutely improper. Mr. Gouverneur Morris said that if there should be no Vice President, the President of the Senate would be temporary successor, which would amount to the same thing. Mr. Sherman saw no danger. If the Vice President were not to be President of the

[66] Madison Papers, op. cit., p. 1506.
[67] Ibid., pp. 1507–1508.
[68] Ibid., p. 1509.
[69] Ibid., p. 1510.
[70] Ibid., p. 1511.
[71] Ibid., p. 1513, etc.

Senate, he would be without employment; and some member by being made President must be deprived of his vote, unless when an equal division of votes would happen in the Senate, which would be but seldom.[72]

Colonel Mason thought the office of Vice President an encroachment on the rights of the Senate; and that it mixed too much the legislative and the executive. He disliked to refer the power of making appointments to either branch of the legislature. He was averse to vest so dangerous a power in the President alone. As a method for avoiding both, he suggested a Privy Council of six members to be chosen for six years by the Senate, the concurrence of the Senate to be required only in the appointment of ambassadors, and in making treaties. This would prevent the constant sitting of the Senate, which he thought dangerous. It would also save the expense of constant sessions of the Senate. He had always considered the Senate as too unwieldy and expensive for appointing officers, especially the smallest.[73]

On the question, "shall the Vice President be ex officio of the Senate," the vote stood: [74]

Yeas: New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 8.

Noes: New Jersey, Maryland, 2.

Absent: North Carolina.

The Convention then took up the clause "The President, by and with the advice and consent of the Senate, shall have power to make treaties," etc. Mr. Wilson moved to add after the "Senate" the words "and House of Representatives." Mr. Sherman thought the only question was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole legislature. The motion was defeated by a vote of 10 to 1.[75]

On the clause "He shall nominate * * * appoint ambassadors * * *," Mr. Wilson objected to the mode of appointing as blending a branch of the Legislature with the Executive. There could be no good Executive without a responsible appointment of officers. Responsibility was in a manner destroyed by such an agency of the Senate. Mr. Pinckney was against joining the Senate in these appointments, except in the instances of ambassadors, who he thought ought not to be appointed by the President. Mr. Gouverneur Morris said that as the President was to nominate there would be responsibility; and as the Senate was to concur, there would be security.[76] Mr. King said that most of the inconveniences charged on the Senate were incident to a council of advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong.

On the question on these words in the clause, to wit, "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint, ambassadors, * * *" it was agreed to, *nem. con.*

On motion of Mr. Spaight that "the President shall have power to fill up all vacancies that may happen during the recess of the Senate,

[72] Madison Papers, op. cit., p. 1516.
[73] Ibid., p. 1517.
[74] Ibid., p. 1518.
[75] Ibid., p. 1519.
[76] Ibid., p. 1519.

by granting commissions which shall expire at the end of the next session of the Senate", it was agreed to, *nem. con.*

On the section "The President by and with the advice and consent of the Senate shall have power to make treaties, but no treaty shall be made without the consent of two-thirds of the members present",[77] Mr. Wilson thought it objectionable to require the concurrence of two-thirds, which put it into the power of a minority to control the will of the majority. Mr. King concurred in the objection, remarking that as the Executive was here joined in the business there was a check which did not exist in Congress, where the concurrence of two-thirds was required. Mr. Madison moved to authorize a concurrence of two-thirds of the Senate to make treaties of peace without the concurrence of the President.[78]

Colonel Mason moved to take up a proposal to establish an executive council, the members of which were to be appointed by the Senate or the Legislature. Mr. Wilson approved of a council in preference to making the Senate a party to appointments. The motion failed.[79]

Mr. Williamson and Mr. Spaight moved "that no treaty of peace affecting territorial rights should be made without the concurrence of two-thirds of the members of the Senate present."

Mr. Gouverneur Morris, on September 8, said if two-thirds of the Senate should be required for peace, the Legislature would be unwilling to make war for that reason, on account of the fisheries, or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate were for peace, and were not allowed to make it, they would be apt to effect their purpose in the more disagreeable mode of negativing the supplies for war. Mr. Williamson remarked that treaties were to be made in the branch of the Government where there might be a majority of the States, without a majority of the people. Eight men might be a majority of a quorum and should not have the power to decide the conditions of peace. Mr. Wilson said if two-thirds were necessary to make peace, the minority might perpetuate war, against the sense of the majority.[80] Mr. Gerry enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one-fifth of the people. The Senate would be corrupted by foreign influence. Mr. Sherman was against leaving the rights established by the treaty of peace to the Senate.

On the question to strike out the clause requiring two-thirds of the Senate for making treaties the vote stood: [81]

Yeas: Delaware, 1.

Noes: New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

Divided: Connecticut.

Mr. Rutledge and Mr. Gerry moved that "no treaty shall be made without the consent of two-thirds of all the members of the Senate." The vote on the question stood:

Yeas: North Carolina, South Carolina, Georgia, 3.

Noes: New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 8.

[77] Madison Papers, op. cit., p. 1520.
[78] Ibid., p. 1521.
[79] Ibid., pp. 1523-1524.
[80] Ibid., p. 1525.
[81] Ibid., p. 1526.

Mr. Sherman moved that "no treaty shall be made without a majority of the whole number of the Senate." On the question, it failed.

Mr. Madison moved that a quorum of the Senate consist of two-thirds of all the members. The motion failed.[82]

On a question on the clause of the report of the Committee of Eleven relating to treaties by two-thirds of the Senate, all the States were "aye", except Pennsylvania, New Jersey, and Georgia.

The clause referring to the Senate the trial of impeachments against the President for treason and bribery, was taken up. Mr. Mason moved to add after "bribery", "or maladministration." Mr. Madison said so vague a term would be equivalent to a tenure during pleasure of the Senate.[83]

Mr. Madison objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature. Mr. Gouverneur Morris thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the Executive on the Legislature, considering the legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he could be turned out. Mr. Pinckney disapproved of making the Senate the court of impeachments as rendering the President too dependent on the Legislature. Mr. Williamson thought there was more danger of too much levity, than of too much rigor, towards the President, considering the number of cases in which the Senate was associated with the President.[84]

Mr. Madison's motion to strike out the words "by the Senate" after the word "conviction" failed by a vote of 2 to 9.[85]

The Convention then took up the clause of the report, "All bills for raising revenue shall originate in the House of Representatives; and shall be subject to alterations and amendments by the Senate." It was moved to strike out the latter part of the clause and substitute "but the Senate may propose or concur with amendments, as in other bills", which was agreed to.

Mr. Gouverneur Morris moved to amend the third clause of the report made on September 4. The clause was made to read: "The Senate * * * shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present; and every member shall be on oath."

On the question, the vote stood 9 to 2.[86]

Mr. McHenry moved to amend Article X, section 2, so as to read "He [the President] may convene both, or either of the Houses, on extraordinary occasions."

Mr. Wilson said he should vote against the motion because it implied that the Senate might be in session when the Legislature was not, which he thought improper.

On the question, the vote was: Yeas, 7; noes, 4.

A committee consisting of Mr. Johnson, Mr. Hamilton, Mr. Gouverneur Morris, Mr. Madison, and Mr. King, was then appointed by ballot

[82] Madison Papers, op. cit., p. 1527.
[83] Ibid., p. 1528.
[84] Ibid., p. 1529.
[85] Ibid., p. 1530.
[86] Ibid., p. 1531.

to revise the style of, and arrange, the articles which had been agreed to.[87]

On September 10, Mr. Randolph stated, among others, his objection to the Senate being made the Court of Impeachment for trying the Executive.[88]

On September 12 the Committee of Style reported a digest of the plan of a Constitution.

Mr. Williamson moved to reconsider the clause requiring three-fourths of each House to overrule the negative of the President, in order to strike out three-fourths and insert two-thirds.[89] Mr. Gerry thought two-thirds would be a considerable, perhaps, a proper, security. Three-fourths would put too much in the power of a few men. If three-fourths were required, a few Senators, having hopes from the nomination of the President to offices would combine with him and impede proper laws. Making the Vice President Speaker would increase the danger.[90]

On the question to insert two-thirds in place of three-fourths, the vote stood:[91]

Yeas: Connecticut, New Jersey, Maryland, North Carolina, South Carolina, Georgia, 6.

Noes: Massachusetts, Pennsylvania, Delaware, Virginia, 4.

Divided: New Hamsphire.

On September 14 the convention resumed the consideration of the report of the Committee on Style. To section 4, of Article I, was added "except as to the places of choosing Senators" at the end of the first clause. To section 5, of Article I, Colonel Mason and Mr. Gerry moved to insert after the word "parts" the words, "of the proceedings of the Senate." The motion failed.[92]

On September 15, Article II, section 2, relating to the power of the President to grant pardons was considered. Mr. King suggested the expedient of requiring the concurrence of the Senate in acts of pardon.[93] Mr. Madison would prefer an association of the Senate, as a council of advice, with the President. Mr. Randolph could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President and that body. Colonel Mason thought the Senate already had too much power. The motion of Mr. Randolph on the subject failed.[94]

During the consideration of Article V, Mr. Sherman moved to annex a proviso "that no State shall without its consent, be * * * deprived of its equal suffrage in the Senate." The motion was defeated.[95]

Mr. Gouverneur Morris moved to annex the proviso above, omitting the matter indicated by omission marks. His motion was agreed to.[96]

Mr. Gerry stated the objections which determined him to withhold his name from the Constitution. Among those objections were the duration and reeligibility of the Senate and the Vice President being made head of the Senate.

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[87] Madison Papers, op. cit., p. 1532.
[88] Ibid., p. 1541.
[89] Ibid., p. 1562.
[90] Ibid., p. 1563.
[91] Ibid., pp. 1564-1565.
[92] Ibid., p. 1573.
[93] Ibid., p. 1587.
[94] Ibid., p. 1588.
[95] Ibid., p. 1592.
[96] Ibid., p. 1593.

On September 17 the engrossed Constitution was read to the Convention. As the concluding article is of general interest it is repeated here, together with the names of the signatories:

ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the 17th day of September, in the year of our Lord 1787, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

New Hampshire

JOHN LANGDON,
NICHOLAS GILMAN,

Massachusetts

NATHANIEL GORHAM,
RUFUS KING,

Connecticut

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN,

New York

ALEXANDER HAMILTON,

New Jersey

WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DAYTON,

Pennsylvania

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS,

Delaware

GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOME,

Maryland

JAMES MCHENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL,

Virginia

JOHN BLAIR,
JAMES MADISON, JR.,

North Carolina

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON,

South Carolina

JOHN RUTLEDGE,
CHARLES COTESWORTH PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER,

Georgia

WILLIAM FEW,
ABRAHAM BALDWIN,

Attest:

WILLIAM JACKSON, *Secretary.*

The Constitution being signed by all the members, except Mr. RANDOLPH, Mr. MASON, and Mr. GERRY, who declined giving it the sanction of their names, the Convention dissolved itself by an adjournment sine die.[97]

[97] Madison Papers, op. cit., p. 1622 et seq.